COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Division of Administrative Law Appeals

 One Congress Street, 11th Floor

 Boston, MA 02114

**JANIS ROCKETT**, (617) 626-7200

 *Petitioner* Fax: (617) 626-7220

 **www.mass.gov/dala**

 *v.* Docket No: CR-14-824

**MASSACHUSETTS TEACHERS’** June 29, 2018

**RETIREMENT SYSTEM,**

 *Respondent*

**Appearance for Petitioner**:

Ryan Benharris, Esq.

Law Offices of Deborah Kohl, P.C.

191 Bedford Street

Fall River, MA 02720

**Appearance for Respondent**:

 Robert G. Fabino, Esq.

 Massachusetts Teachers’ Retirement System

 500 Rutherford Avenue, Suite 210

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**Administrative Magistrate**:

Angela McConney Scheepers, Esq.

**SUMMARY**

The Massachusetts Teachers’ Retirement System denial of Janis Rockett’s application for accidental disability retirement is affirmed. The Petitioner has not proven by a preponderance of the evidence that her work caused a psychiatric injury.

**DECISION**

Pursuant to G.L. c. 32, § 16(4), the Petitioner, Janis Rockett, appealed the December 19, 2014 decision of the Massachusetts Teachers’ Retirement System (System) to the Contributory Retirement Appeal Board (CRAB), denying her application for accidental disability retirement benefits. Ms. Rockett’s appeal was timely.

On November 18, 2015, the Division of Administrative Law Appeal (DALA) issued a First Prehearing Order directing that Ms. Rockett file a Pre-Hearing Memorandum containing a statement of relevant facts, witness list, exhibits and a summary of legal issues by December 18, 2015. The Order also directed that the System submit a Pre-Hearing Memorandum in response to Ms. Rockett’s statement, a witness list, exhibits and a summary of the legal issues by January 18, 2016.

I held an evidentiary hearing on March 9, 2016. The stenographic transcript serves as the official record of the hearing. Ms. Rockett testified on her own behalf. I marked Ms. Rockett’s Pre-Hearing Memorandum “A” for identification and the System’s Pre-Hearing Memorandum “B” for identification. I admitted twenty-six exhibits (Exhibits 1 – 26) into evidence.

I impounded Exhibit 8 which contains a student’s witness statement and identifying information; and Exhibit 17, which contains a student’s Juvenile Court Department information and identity. I ordered that all reference to the names of students be stricken from the stenographic transcript.

Both parties submitted their Post Hearing Briefs on June 24, 2016. The parties inquired about the status of the case in a joint request for status conference filed on June 15, 2018, whereupon the administrative record closed.

**FINDINGS OF FACT**

Based on the documents admitted into evidence and the testimony presented at the hearing, I make the following findings of fact:

1. Janis Rockett (born 1964) was hired by the New Bedford School Department (NBSD) on September 19, 2011, and taught eighth grade science at the Normandin Middle School. (Exhibits 6 and 13.)
2. After eighth period at the end of the school day, students who caught buses were allowed to leave first, and students who walked home left afterwards. (Testimony.)
3. On Monday, October 24, 2011, one of Ms. Rockett’s students did not appear for her eighth period class. As required by procedure, she reported him. Ms. Rocket had already written up the student for infractions on at least four occasions. When he finally appeared for class, Ms. Rockett wrote him up for being absent without permission. The student ignored Ms. Rockett when she asked him to begin his work. (Exhibit 10; Testimony.)
4. At approximately 2:10 p.m., Ms. Rockett stood by her classroom door to usher out the bused students first. The student, a walker, tried to leave on at least three occasions without Ms. Rockett’s permission. Each time Ms. Rockett reminded the student that he had to wait to be dismissed with the other walkers, and that he had to return to his seat. Ms. Rockett and the student collided as she tried to physically block him from leaving a fourth time. As he went by, the student called Ms. Rocket obscene names and said, “I am leaving and I don’t care what you say.” (Exhibits 3 and 11; Testimony.)
5. Ms. Rockett sustained shoulder, neck and lower back strains, and pain in her shoulder and back. (Exhibit 8; Testimony.)
6. Ms. Rockett locked the door and called for assistance from another teacher a few doors down. The teacher came and dismissed Ms. Rockett’s class. Ms. Rockett looked outside the window and saw the student “flipping her the bird.” The other teacher helped Ms. Rockett complete the Employee’s Report of Injury form. In the form, Ms. Rockett narrated, “A student who was attempting to leave without permission (not a bus student), pushed me out of the way going out of the classroom ... I do not feel like the incident could have been prevented, as the student was determined to push past me & leave without permission.” (Exhibits 8 and 18.)
7. Also on the same day, Ms. Rockett completed a Student Assistant Referral Form, checking off the spaces for “Assault/Battery on Staff,” “Profanity/Vulgarity,” “Defiance” and “Other (explain) Gross sexual comment towards a staff member.” Ms. Rockett also wrote, “The bell rang for the bus dismissal. [ ] who is not a bus person, got up to leave. I was standing at the door and I reminded him that he would have to wait to be dismissed with the walkers. [ ] PUSHED me out of the way and upon leaving said: “I am leaving and don’t care what you say: CUNT.” (Exhibit 8.)
8. Ms. Rockett asked Principal Jeanne Bonneau to remove the student from her class. (Testimony.)
9. That same afternoon, the student’s mother appeared at the school and challenged Ms. Rockett for writing up her son. (Exhibit 10; Testimony.)
10. When Ms. Rockett returned to work on October 25, 2011, the student was still assigned to her classroom. He had not yet been disciplined. (Testimony.)
11. A student witness to the incident filed a Student Incident Report on October 25, 2011. She noted that her fellow student tried to leave with the bused students. When Ms. Rockett told him that he could not go, he pushed the teacher, ran out of the classroom and called her a “white cunt.”[[1]](#footnote-1) (Exhibit 8.)
12. On October 27, 2011, Ms. Rockett filed an incident report with the school’s resource officer, Leo Ewaszko. After she filed a criminal complaint for assault and battery at New Bedford District Court November 16, 2011, the student was criminally prosecuted. When the student and his family were verbally abusive after a court appearance, the court granted Ms. Rockett a restraining order. After months of court appearances, on May 6, 2013 the Taunton Juvenile Court gave the student a continuance without a finding (CWOF) for nine months, with an order to stay away and have no contact with Ms. Rockett. (Exhibits 3, 12 and 17.)
13. After a student conference and parental contact, Principal Bonneau removed the student from Ms. Rockett’s class a few days later. He was punished with detention on November 2, 3, 4, 8, 9 and 10, 2011. The student eventually transferred out of the school district. (Exhibit 16; Testimony.)
14. On October 28, 2011, Principal Bonneau filed an Industrial Accident Report of Foreman or Supervisor form in order to document the incident. The NBSD also filed an Employer’s First Report of Injury or Fatality form with workers’ compensation. (Exhibit 8.)
15. Ms. Rockett appeared for work on Wednesday and Thursday, October 26 and 27, 2011. On Friday, October 28, 2011, she called in sick. She never returned to her teaching job. (Exhibit 16.)
16. By the end of her tenure with the NBSD, Ms. Rockett had accumulated 5.6 years of service with the System. (Exhibit 6.)
17. On October 28, 2011, Ms. Rockett saw her primary care physician, Dr. Christine A. Will, complaining of late night panic attacks, heart palpitations, disrupted sleep cycle, and anxiety due to re-entering the school building after the October 24, 2011 incident. Dr. Will prescribed medications to assist with the sleep disturbances. (Exhibit 25.)
18. From October 2011 through February 2013, Ms. Rockett met with Dr. Will on a monthly basis complaining of anxiety from being in open spaces, difficulty leaving the house and uneasiness about participating in activities and “difficulty with moving on.” In April 2012, doctors ordered Ms. Rockett out of work for the remainder of the 2011 - 2012 school year and continued to adjust her anxiety medications. (Exhibit 25.)
19. Ms. Rockett began psychotherapy treatment with Jill Eklund, LICSW, on November 17, 2011. Ms. Rockett narrated that she had panic symptoms of increased startle response, sweating/stiffening hands, increased heart palpitations and difficulty driving near schools, not just near the Normandin Middle School. Ms. Rockett also reported signs of depression, lack of energy and interest, feeling that there was no reason to get out of bed and difficulty sleeping. Due to these self-reported symptoms, Ms. Rockett stated that she was unable to return to work. Ms. Eklund noted PTSD symptoms and recommended that Ms. Rockett return for weekly appointments. Ms. In their weekly sessions, Ms. Eklund observed that Ms. Rockett was anxious, depressed, and needed to develop coping, or “grounding” techniques in order to handle PTSD symptoms. (Exhibit 20.)
20. In June 2012, Ms. Eklund referred Ms. Rockett to Kelly Zucco, LICSW and psychiatrist Juris Treibergs. On July 7, 2012, Ms. Zucco found that Ms. Rockett was suffering from the classic signs of PTSD following the October 24, 2011 incident. In her April 2013 treatment notes, Ms. Zucco proposed a treatment plan of practicing relaxation, diaphragmatic breathing, recognizing and disputing irrational thinking and participating in the daughter’s school functions. (Exhibit 21.)
21. In April 2013, Ms. Rockett reported to Dr. Treibergs that she was feeling better than eighteen months ago but still had nightmares. She also stated that she tried to avoid school related events involving her daughter, as well as airports. (Exhibits 21and 22.)
22. On September 9, 2013, Dr. Treibergs signed a form for Ms. Rockett’s counsel in the workmen’s compensation case, stating that she was temporarily totally disabled; and that the October 24, 2011 work-related injury was the predominant cause of the resulting disability. (Exhibit 22.)

*Workers’ Compensation Claim*

1. Ms. Rockett applied for workers’ compensation disability benefits on October 24, 2011. In her December 3, 2012 Settlement Agreement, she received Section 35 payments from October 25, 2011 until June 1, 2013 in the amount of $350.00 -$366.32 per week. The City took liability for any medical treatment reasonable, necessary and causally related to the October 24, 2011 injury. (Exhibits 3, 5, 6 and 9.)

*Application for Accidental Disability Retirement*

1. On June 18, 2013, Ms. Rockett filed a Member’s Application for Disability Retirement for accidental disability. In the application, she listed PTSD and depression as the medical reasons causing her application for disability. (Exhibit 3.)
2. Ms. Rockett listed the essential duties of her position as, “prepare lesson plans and implement the same based on the Common Core Teaching Standards for Middle School Science.” She stated that she had to perform those essential duties daily, and that she could no longer perform them due to her disability. (Exhibit 3.)
3. Under the heading “Reason for Accidental Disability,” Ms. Rockett checked the “personal injury” box on her application, and stated under the subheading of “Description of incident(s) or hazard/exposure:”

Physically and verbally assaulted by a student. “Hockey checked” by a student into a wall. Called obscene names.

(Exhibit 3.)

1. On the application, Ms. Rockett wrote that she was performing her job duty of “[t]eaching lesson plans to students in classroom” immediately prior to and during the time of person injury she sustained. Ms. Rocket also identified another student who witnessed the event. (Exhibit 3.)
2. In the application, Ms. Rockett stated that she had undergone physical therapy, and was currently in counseling and on medication for the treatment of PTSD and depression. (Exhibit 3.)
3. Ms. Rockett submitted a Treating Physician’s Statement Pertaining to a Member’s Application for Disability Retirement from Dr. Treibergs. In the Physician’s Statement, Dr. Treibergs stated that he had been treating Ms. Rockett since August 9, 2012, and asserted that she had suffered an injury on October 24, 2011. He stated that she was unable to perform the essential duties of her position, and was last able to do so on October 27, 2011. Ms. Rockett could not be present in a school setting without getting panic attacks, and she could not be around large groups of people. (Exhibit 4.)
4. Dr. Treibergs diagnosed Ms. Rockett with PTSD and major depression, single episode, in partial remission. He noted that her condition had changed in that her depression symptoms had reduced. In addition to medications, Ms. Rockett treated with a licensed social worker for weekly psychotherapy sessions. (Exhibit 4.)
5. Dr. Treiburgs noted that Ms. Rockett’s condition was stable, and not yet at maximum medical improvement (MMI). He noted that her condition could continue indefinitely because “traumatic memories are triggered with everyday memories.” (Exhibit 4.)
6. Dr. Treibergs opined that Ms. Rockett’s disability was caused when she was a victim of a physical assault in the classroom, her incapacity was permanent, and that the natural and proximate cause of the personal injury which occurred when she was the “victim of physical assault in classroom,” and was sustained in the performance of her duties. (Exhibit 3.)
7. On November 25, 2013, the City of New Bedford (City) submitted the Employer’s Statement Pertaining to a Member’s Application for Disability Retirement (Employer’s Statement). (Exhibit 5.)
8. The System sought a statement from Principal Bonneau, and the City submitted it as a supplement to the Employer’s Statement. In the December 8, 2014 statement, Principal Bonneau recounted that while the student’s occasional behavioral problems were time consuming to the administration, they had never amounted to anything physical. After the October 24, 2011 incident, Principal Bonneau interviewed four student witnesses. The four student witnesses stated that the student had no intention of pushing Ms. Rockett, and was trying to go under her arm to exit the room. Principal Bonneau concluded that the student did not intend to harm Ms. Rockett, and that she was not in any danger as a result of the incident. Principal Bonneau thought that Ms. Rockett “elevated the interaction” by trying to prevent the student from leaving. In the principal’s opinion, Ms. Rocket should have allowed the student to leave after explaining to him that there would be consequences if he did so. In her fifty years of teaching experience, Principal Bonneau thought that the October 24, 2011 incident was “relatively minor,” and not one that would cause a typical and reasonable teacher to experience any significant stress. (Exhibits 5 and 16.)

*Independent Medical Examinations*

1. Ms. Rockett was examined by two impartial doctors appointed by the Department of Industrial Accidents (DIA) and one independent medical examiner hired by the insurer in connection with her ongoing workers’ compensation claim. Psychiatrist Marc Whaley examined Ms. Rockett on May 31, 2012 for the DIA. He reviewed her October 28, 2011-February 2012 medical records from Dr. Christine Will, the January 6, 2012-February 3, 2012 physical therapy reports and the November 17, 2011-February 3, 2012 records from LICSW Jill Eklund. (Exhibit 10.)
2. Dr. Whaley noted that Ms. Rockett had no pre-existing psychiatric history, and concluded that she suffered from PTSD as a result of the October 24, 2011incident. He noted that “it would appear that this assault experience is the only cause of her present psychiatric difficulties,” but opined that her “prognosis for her return to better functioning and vocational capacities would be fairly good.” Dr. Whaley recommended ongoing treatment and aggressive use of psychoactive medications. (Exhibit 10.)
3. Approximately eighteen months later, on December 27, 2013, psychiatrist Michael Mufson conducted an examination on behalf of the insurer. Dr. Mufson reviewed the psychological records from Ms. Eklund and Ms. Zucco; the psychiatric records from Dr. Treibergs; the medical records from Dr. Will; the physical therapy records and Dr. Whaley’s June 2012 IME. (Exhibit 11.)
4. After his evaluation which included the MMPI, Dr. Mufson concluded that Ms. Rockett’s ongoing subjective complaints were likely related to her pre-existing depressed mood and other long-term personality factors, not the October 24, 2011 incident. Dr. Mufson opined that Ms. Rockett did not suffer from PTSD, but had experienced an adjustment disorder related to the incident which had resolved within three to six months after the incident. He noted that she was frustrated and angry about how the school administration treated her after the incident. Dr. Mufson noted that there was no evidence that Ms. Rockett had experienced a life-threatening trauma or violent trauma of such severity that would warrant the diagnosis of acute stress disorder, or PTSD. Instead, Dr. Mufson found that Ms. Rockett’s current symptoms were related to her longstanding personality problems and chronic depression associated with psychological factors, not to the work incident. He found Ms. Rockett hypersensitive to criticism, overly moralistic, dealt with conflict with denial and repression and transformed internal emotional conflict into subjective symptoms. Dr. Mufson opined that she was in a regressed state of invalidism, which could have resulted from her treatment. He concluded that if Ms. Rockett received a formal psychological and psychiatric treatment that addressed her regression and longstanding psychological problems, she would be able to return to work within three months of receiving the treatment – if so motivated. (Exhibit 11.)
5. On April 23, 2014, psychiatrist Michael W. Kahn examined Ms. Rockett at the request of the DIA. He reviewed the IMEs of Doctors Whaley and Mufson, the medical records from Dr. Will and the treatment records from Ms. Eklund and Ms. Zucco. Although Dr. Kahn could see how Dr. Mufson had diagnosed Ms. Rockett with adjustment disorder with mixed features, he diagnosed her with PTSD “because she seemed to be unproblematic and functioning before the incident and has obviously had trouble since.” He opined that her disorder was total, but temporary, and no endpoint had been reached. He wrote, “Dr. Mufson’s description of her having a dysthymic baseline may indeed be true, but my impression was that she embraced life prior to the injury, and there are many things she derived pleasure from.” (Exhibit 12.)
6. Pursuant to G.L. c. 32, § 6(3), PERAC convened a medical panel comprised of neurologist Thomas R. Sciascia, and psychiatrists Melvyn Lurie and Joseph Albeck. (Exhibit 18.)
7. The panel physicians reviewed Ms. Rockett’s job description and medical records. At the May 2, 2014 examination, Ms. Rockett described the October 24, 2011 incident, and informed the panel that she had been afraid that the student would hurt her. She said that she found his conduct purposeful, and that he was known to the school administration. She described nightmares that had decreased from every night to every two weeks. The nightmares returned in intensity and frequency when she discussed the incident. She said that she avoided people and cannot shop. She described her treatment with a psychiatrist every three months, with a psychotherapist every month, and a drug regimen of Ativan twice weekly. (Exhibits 14 and 18.)
8. Dr. Lurie wrote the report on behalf of the panel. The panel found that Ms. Rockett suffered from PTSD:

... and even being near a school triggers an intolerable emotional reaction which is both psychological and psycho-physiologic, and would interfere with her ability to concentrate and plan work, as well as to interact appropriately with her students.

(Exhibit 18.)

1. The panel answered in the affirmative on questions 1 and 2, finding that Ms. Rockett was psychiatrically disabled and thus mentally incapable of performing the essential duties of her job as described in the current job description. Because the panel found that Ms. Rockett had been in appropriate treatment for a year with no likelihood of significant improvement in the foreseeable future, it found said incapacity was likely to be permanent. (Exhibit 18.)
2. The panel certified causation by answering in the affirmative on question 3, finding that said incapacity was such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed. (Exhibit 18.)
3. On July 3, 2014, the System sought a clarification from the panel in light of Dr. Mufson’s December 27, 2013 IME and a February 3, 2012 motor vehicle accident,[[2]](#footnote-2) wherein Ms. Rockett was diagnosed with post-traumatic headaches. On July 20, 2014, the Panel issued its response, reiterating its earlier opinion. (*See* Findings of Fact 42-44; Exhibits 19, 23, 24 and 25.)
4. Again, Dr. Lurie responded on behalf of the panel. Dr. Lurie wrote that Dr. Mufson’s characterization of Ms. Rockett’s PTSD was inconsistent with that of DSM. “It is not the severity of the trauma, but rather the psychological experience of it that counts.” Dr. Lurie opined that Ms. Rockett had all the requisite symptoms and signs necessary for the diagnosis of PTSD; with the important symptom of phobic avoidance of reminders of the tragic event.

The place of occurrence is most usual. The presence of the traumatizer is another. In this case, the employee tried to return to work, but discovered the assailant was still present. Moreover, her phobic avoidance of her own school has been generalized to other schools, specifically her daughter’s school. This indicates an expansion of the condition.

(Exhibit 19.)

1. In regard to the February 3, 2012 motor vehicular accident, Dr. Lurie noted that posttraumatic headaches are not a psychiatric diagnosis. (Exhibit 19.)
2. On December 19, 2014, the Board voted to deny Ms. Rockett’s accidental disability retirement application because “the Board determined that you did not meet your burden of proof by a preponderance of the evidence.” (Exhibit 2.)
3. On December 23, 2014, Ms. Rockett filed a timely appeal at DALA. (Exhibit 1.)

**CONCLUSION AND ORDER**

The decision of the Massachusetts Teachers’ Retirement System denying Ms. Rockett’s claim is affirmed. An applicant bears the burden of proving her entitlement to accidental disability retirement by a preponderance of the evidence. *Lisbon v. Contributory Ret. App. Bd*., [41 Mass. App. Ct. 246](http://sll.gvpi.net/document.php?id=sjcapp:41_mass_app_ct_246), 255 (1996). To qualify for accidental disability retirement, an applicant must prove total and permanent disability by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, her duties at some definite place and at some definite time. G. L. c. 32, § 7. Accidental disability benefits are awarded only when a regional medical panel majority concludes that the applicant is incapable of performing the essential duties of the job, that the incapacity is permanent, and that the incapacity might be the natural and proximate result of the personal injury sustained or hazard undergone in the course of employment. *See Malden Ret. Bd. v. Contributory Ret. App. Bd*., [1 Mass. App. Ct. 420](http://sll.gvpi.net/document.php?id=sjcapp:1_mass_app_ct_420), 423 (1973). A certification of incapacity is a condition precedent to accidental disability retirement by the local board. *Quincy Ret. Bd. v. Contributory Ret. App. Bd*., [340 Mass. 56](http://sll.gvpi.net/document.php?id=sjcapp:340_mass_56), 60 (1959).

 Ms. Rockett was examined by a medical panel composed of a neurologist and two psychiatrists. That panel unanimously concluded that she was psychiatrically disabled on a permanent basis, was unable to perform as a teacher, and that her disability was causally related to the workplace incident of October 24, 2011. However, while an affirmative medical panel certificate is a condition precedent to an award of a disability pension, it is not conclusive, and the retirement board or CRAB must make the ultimate determination based on the record as a whole. *See Blanchette v. Contributory Ret. App. Bd.*, [20 Mass. App. Ct. 479](http://sll.gvpi.net/document.php?id=sjcapp:20_mass_app_ct_479), 482 (1985).

 In order to meet the burden of proof with regards to causation, a member must prove one of two hypotheses: that the disability was caused by a single or series of work-related events, or that the applicant’s employment exposed her to an “identifiable condition … that is not common and necessary to all or a great many occupations.” *Blanchette*, 20 Mass. App. Ct. at 485, quoting *Zerofski’s Case*, [385 Mass. 590](http://sll.gvpi.net/document.php?id=sjcapp:385_mass_590), 595 (1982). It is the applicant’s burden to prove that she has a permanent and total disability that is the natural and proximate result of a personal injury sustained as a result of the performance of her duties. *Fairbairn v. Contributory Ret. App. Bd*., [54 Mass. App. Ct. 353](http://sll.gvpi.net/document.php?id=sjcapp:54_mass_app_ct_353), 357 (2002), citing *Blanchette*, 20 Mass. App. Ct. at 483.

Ms. Rockett was examined by three independent psychiatrists. In the IMEs, Ms. Rockett described the October 24, 2011 incident at length, and her ensuring symptoms preventing her from resuming her previous lifestyle. In his May 31, 2012 IME, Dr. Whaley found that Ms. Rockett had no pre-existing psychiatric condition, was temporarily suffering from PTSD, and exhibited a prognosis for a return to better functioning and vocational capacities. In his April 23, 2014 IME, Dr. Kahn also found that Ms. Rockett had no pre-existing psychiatric condition, but diagnosed her with temporary PTSD because she seemed unproblematic and was functioning before the October 24, 2011 incident. Unlike Dr. Whaley and later Dr. Kahn, on December 27, 2013, Dr. Mufson found that Ms. Rockett had a pre-existing condition. He found that she had longstanding personality problems and chronic depression associated with psychological factors, unrelated to the workplace incident. He opined that at that time of the incident, she experienced an adjustment disorder that had since resolved. At the time of the December 27, 2013 IME, Ms. Rockett was in a regressed state of invalidism, which could have resulted from her treatment. He concluded that with the psychological and psychiatric treatment, she could return to work within three months – if she were motivated to do so.

I accept the opinion of Dr. Mufson. This is complemented by the December 8, 2014 statement from Principal Bonneau. Principal Bonneau, in her fifty years of teaching experience, thought that Ms. Rockett had “elevated” the situation with the student on October 24, 2011. Prinicipal Bonneau believed the four students she interviewed, who said that the student was trying to duck under Ms. Rockett’s arm when the incident occurred. In fact, the administration punished the student with a six-day detention after a student conference and contact with his parent.

There is no convincing support for the panel’s finding that Ms. Rockett’s injury was likely permanent. She suffered an adjustment disorder at the time of the incident, which has long since been resolved. Her disability was total, but temporary. There has to be some evidence to demonstrate that Ms. Rockett stopped working due to the medical condition on which her application is based.

Even if Ms. Rockett began experiencing symptoms after her last day performing her duties, it would be irrelevant. At best she would have a “subsequently matured disability,” which cannot not form the basis for a disability retirement. *Forrest v. Weymouth Ret. Bd*., Docket No. CR-12-690, Decision (Mass. Div. of Admin. Law App., Feb. 27, 2014), *aff’d* (Contributory Ret. App. Bd., Apr. 13, 2015).

*Vest v. Contributory Ret. App. Bd.* stands for the proposition that a disability must mature no later than the last day that the member performs her duties. 41 Mass. App. Ct. 191, 192. In *Vest*, the member police officer became disabled due to hypertension four years after he left the police department. The officer had been diagnosed with hypertension 12 years before his last day of service. Nevertheless, he was able to perform the essential duties of a police officer until his severance for nonmedical reasons. The court concluded that the injury had not matured into a disabling one while the officer was a member in service, and held that the officer “could not claim accidental disability retirement status on the basis of a subsequently matured disability.” *Id*. at 192-194.

Ms. Rockett is not eligible for accidental disability benefits because she was not totally and permanently disabled on her last day work due to a work-related disabling condition or incapacity. Without the award of an accidental disability retirement benefit, Ms. Rockett’s service with the System amounts to 5.6 years, far short of the required years of service for superannuation retirement. G.L. c. 32, § 5(1).

 Ms. Rockett has not made out a threshold showing of entitlement to Section 7 benefits.

Accordingly, the Massachusetts Teachers’ Retirement System’s denial of Janis Rockett’s application for accidental disability retirement is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers

Administrative Magistrate

DATED: June 29, 2018

1. According to Ms. Rockett’s criminal complaint, the student is white. (Exhibit 17.) [↑](#footnote-ref-1)
2. Ms. Rockett’s medical records indicate that the motor vehicular accident occurred on February 2, 2012. (Exhibit 23.) The Board’s request for clarification lists the accident date as February 2, 2013. (Exhibit 19.) [↑](#footnote-ref-2)