COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

DEBRA ROGERS, *Petitioner*	:	Docket No. CR-23-0270
	:	Date: February 14, 2025
v.	:	
ESSEX REGIONAL RETIREMENT BOARD, *Respondent*	:	

Appearances:

For Petitioner: Susan McDonald, *Esq*.
For Respondent: Christopher Collins, *Esq*.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

While at work, the Petitioner fell, hit her head, and suffered a concussion. Thereafter, she had post-concussion syndrome. While she is presently disabled, she failed to prove that her disability was caused by her fall. The evidence does not support her claim that her present symptoms are on account of post-concussion syndrome. It is as likely, if not more likely, that her present impairment stems from a psychological disorder (likely conversion disorder).

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Essex Regional Retirement Board's ("ERRB") denial of her application for accidental disability retirement. I conducted an in-person hearing on October 22, 2024. The Petitioner testified on her behalf and the Board offered no witnesses. I entered Exhibits 1-20 into evidence. After the hearing, the ERRB submitted an additional exhibit which I now admit as Exhibit 21. I marked one

document for identification A. Both parties submitted post-hearing briefs on January 27, 2025, at which point I closed the administrative record.

FINDINGS OF FACT

Introduction

1. The Petitioner was an administrative assistant with the Town of Hamilton from February 2014 until October 2016. (Stipulated facts.)

2. On April 16, 2016, she was injured in a workplace accident. She fell on a set of concrete steps striking her head and face. (Stipulated facts; Ex. 7.)

3. She sustained several facial injuries and cracked teeth. Those injuries were ultimately treated, and she healed from them.[1] (Stipulated facts.)

4. However, she also suffered a concussion. (Stipulated facts.) The effects and fallout of the concussion drive the dispute in this case.

Post-accident treatment and assessments

5. Immediately after her fall, and in the months to follow, she was treated by various specialists for an array of physical ailments: she had an emergency dental appointment the next day, she met with eye specialists in August 2016 for a retinal hemorrhage, and she was diagnosed with tinnitus by an audiologist in October 2016. (Stipulated facts.)

6. Throughout the span of this case, she experienced headaches and problems with her balance, hearing, memory and concentration. (Testimony.)

7. She first followed up with her primary care physician, Dr. Curtis Ersing, a few days

[1] I do not mean to downplay the seriousness of her physical injuries, which were undoubtedly painful. But the extent of these injuries is irrelevant to this appeal and thus I do not dwell on their details.

after the fall. He diagnosed her with a concussion without loss of consciousness. Over the next few months, he noted that her condition was improving. On May 31, 2016, Dr. Ersing cleared the Petitioner to return to work on a part-time basis (4 hours a day). By June 2016, she no longer had headaches. (Ex. 20, pgs. 31-40.)

8. The Petitioner indeed returned to work, part-time. But she says her manager kept complaining she was working "too slow" and wanted her to come back full time. Nevertheless, while there, she was able to perform her duties on a modified schedule. (Testimony; ex. 5.)

9. However, in August 2016, Dr. Ersing noted the Petitioner was experiencing emotional distress due to perceived supervisory pressure; this was hindering her recovery. A few weeks later he echoed that: "supervisory bullying at work had exacerbated her inability to move forward." (Ex. 20, pgs. 31-40.)

10. She continued to follow up with Dr. Ersing because she had lingering symptoms. He recommended a neurological evaluation. In September 2016, she was evaluated by Dr. Edgard Robertson. He noted that she was experiencing stress at work because of a "bullying boss." He diagnosed her with "postconcussion syndrome primarily manifesting as headaches, increased sleep, decrease ability to cope with a bullying boss." He did not believe any "further neurologic involvement is indicated." Rather, he felt "that psychotherapy will be much more beneficial than medication." (Ex. 20, pgs. 50-51.)

11. In an office visit two days later, Dr. Ersing wrote that the Petitioner is "clearly unable to continue working at this time due to post-concussion syndrome complicated by

PTSD, exacerbated by insensitive/impatient managerial oversight." He referred her to therapy. (Ex. 20, pg. 40.)

12. She began working with therapists regarding her ongoing anxiety and depression, as well as decreased focus and concentration. (Stipulated facts.)

13. Therapist notes say the "diagnostic impression is complex PTSD, developmental trauma, rule out dissociation." (Ex. 20, pg. 83.) She was referred to another therapist for Dialectical Behavioral Therapy but could not follow through because of a change in insurance. (Ex. 20, pg. 129.)

14. Other notes reveal that the Petitioner was complaining about her boss, who was "mean" and "constantly abusive every day." She also said her husband was a "bully." (Testimony; ex. 20, pg. 53.)

15. On October 5, 2016, she was terminated from her job. (Stipulated facts.)

16. She complained to Dr. Ersing about her termination at work. He noted that she was in PTSD therapy, but her therapist was recommending psychotherapy. The more she shared, she "appeared to regress into a near-panic attack, distractable, hyperventilating, difficulty keeping a clear train of thought." (Ex. 20, pg. 31.)

17. Yet by November 2016, Dr. Ersing was reporting that the Petitioner's anxiety and headaches had decreased and concentration improved. She did report short term memory issues and thought blocking "when under stress." She continued to experience vertigo and visual/audio overload when in crowds. (Ex. 20, pg. 31.)

18. In January 2017, she was evaluated by Dr. Brandon Erdos.[2] He diagnosed her with "generalized anxiety disorder and passive dependent personality traits which antedated the injury." He questioned whether she suffered a concussion at all. In any event, he added that if she did, the symptoms should have resolved quickly and completely. He did some objective testing that showed she had good recall. He opined she did not suffer from psychiatric disability but, rather, has "long-standing anxiety and pre-existing personality profile such that she is prone to expressing psychological conflict in terms of physical symptoms." (Ex. 20, pgs. 136, 594.)

19. In February 2017, she was evaluated by a neuropsychologist, Dr. David Nowell, for purposes of her workers' compensation claim. He concluded she had a minor cognitive disorder and adjustment disorder with mixed emotional features. (Stipulated facts.)

20. He thoroughly reviewed her past and current medical records. He conducted objective, psychological testing, evaluating a variety of things: reading, IQ, language, memory, motor dexterity, auditory attention, sustained vigilance, and visuospatial perception. He also administered a personality test, the MMPI-2. (Ex. 20, pgs. 133-144.)

21. In his opinion, her presentation did not appear to suggest an "episodic mood disorder." Nor did she endorse symptoms consistent with a specific anxiety disorder, such as PTSD. Rather, her "presentation would be consistent with reactive depression and anxiety of moderate severity." (Ex. 20, pg. 143.)

22. In May 2017, the Petitioner was seen by Dr. Steven Rauch at Mass. Eye and Ear

[2] This report is not in evidence, but two different doctors refer to, and quote from, it directly.

regarding dizziness and trouble processing visual flow. He conducted some tests, most of which were normal. He did not detect any problems with her hearing: "hearing acuity is excellent in the right and in the left." (Ex. 20, pg. 185.)

23. He wrote that her background was significant for "traumatic brain injury and post-concussion syndrome…and for anxiety." He recommended continued physical and vestibular therapy for her balance issues. (Ex. 20, pg. 185.)

24. The Petitioner had another audio evaluation on April 2, 2018 with Dr. Gonzalo Verdugo. He recommended some tinnitus coping strategies and a re-evaluation in one year. (Ex. 20, pg. 456-47.)

25. A week later she was evaluated by a different neurologist, Dr. Arthur Safran. He diagnosed her with "post-concussion syndrome manifested by psychological features including anxiety and depression." Additionally, he did not find any "neurological impairment" which limits her ability to work, nor any neurological disability related to her accident. He recommended further psychiatric treatment. (Ex. 20, pg. 475.)

26. In July 2018, she had yet another neurological evaluation, this time with Dr. Roger Kinnard. He did not conduct new testing but instead relied on prior reports and his meeting with the Petitioner. He diagnosed her with "post-concussive syndrome with headaches, depression, cognitive problems (memory, attention and executive functions) and increased sleeping[.]" (Ex. 20, pg. 554.)

27. On August 17, 2018, she was evaluated by Dr. Michael Mufson, a psychiatrist. He interviewed her, administered the MMPI-2 test, and extensively reviewed her prior records. (Ex. 20, pgs. 588-598; ex. 21.)

28. He gave a brief history, which included her complaints about being bullied at work by her former supervisor and the severe emotional distress it caused her. (Ex. 20, pg. 589.)

29. He opined she had "no psychiatric disorder or neuropsychiatric disorder causally related to her work injury[.] The results of the evaluation do not support the diagnosis of a post-concussion syndrome or PTSD. Rather, the evaluation reveals a woman with pre-existing personality problems and somatization that underlie her current subjective report of symptoms." (Ex. 20, pg. 596.)

30. He added that the Petitioner had "a dependent personality disorder and regression into invalidism . . . [she had] a longstanding psychological maladjustment presenting with a somatization disorder in which she is expressing internal psychological conflict in subjective symptoms of physical and cognitive impairment." (Ex. 20, pg. 596.)

31. With respect to her ongoing symptoms, the Petitioner testified that her post-concussion symptoms are worse than the symptoms she experienced before the accident. Before, for example, she had headaches, but they would go away whereas now they linger. Before, her fatigue was caused by the stress from her job and was mild, whereas now it is ever present and overwhelming. Before she had no hearing issues; now she hears different noises constantly ("high pitch", "low frequency", and "explosions") and reports hearing loss in both ears. Before she was organized and could juggle multiple tasks; now she is forgetful and easily distracted. (Testimony.)

Accidental disability application

32. In July 2019, the Petitioner applied for accidental disability retirement. (Ex. 3.)

33. Her application listed the reason for her disability as "Brain injury [Traumatic Brain Injury ("TBI")] 04/16/16; post-concussive syndrome." She then listed an array of symptoms:

> headaches; vestibular disturbance; cochlear concussion; tinnitus; dizziness; cognitive and speech deficits; visual disturbance; fatigue; confusion; executive function disturbance; memory and concentration deficits; hypercassis [sic] photo and phonophobia.

(Ex. 3.)

34. Dr. Kinnard filled out the treating physician's statement. He said the Petitioner's diagnosis was "post traumatic syndrome with cognitive impairment" confirmed by "neuropsych" testing. (Ex. 4.)[3]

35. She was then seen by a regional medical panel composed of two neurologists, Drs. Daniel Vardeh and Julian Fisher, and one internist, Dr. Amen Elfiky. (Exs. 8-10.)

36. All three doctors unanimously agreed that the Petitioner was permanently incapacitated. Drs. Fisher and Elfiky also agreed her disability might have been proximately caused by the workplace injury; Dr. Vardeh disagreed. (Exs. 8-10.)

37. Specifically, all three doctors agreed that the Petitioner suffered a concussion when she fell. They also agreed she then suffered from post-concussion syndrome that caused her various symptoms. Finaly, all three doctors agreed that she continued to experience these symptoms. (Exs. 8-10.)

38. The difference between the doctors is that Drs. Fisher and Elfiky believed her

[3] Dr. Kinnard's 2018 report indicated the Petitioner had "post-concussive syndrome" and said nothing about cognitive impairment. It appears the change from "post-concussive syndrome" to "post traumatic syndrome" is a typographical error. Otherwise, if it represents a substantive change in his opinion, there is nothing in the record to explain it.

continuing symptoms were caused by her post-concussion syndrome. (Exs. 8-9.)

39. Neither one, however, acknowledged or really grappled with the different assessments in the record that indicated her symptoms may be psychologically driven. (Exs. 8-9.)

40. Dr. Fisher's report was particularly sparse. It was one page long and did not acknowledge any of the many other evaluations, especially the ones that raised questions of the symptom's origins. He conducted a physical examination that did not reveal anything useful. (Ex. 8.)

41. On the other hand, Dr. Vardeh observed what he called "symptom amplification," which included

> the discrepancy between [the Petitioner's] subjective memory trouble but her detailed ability to tell me about the size of her injury, the doctor she is seeing, and other details surrounding the accident. Several of her neurological tests, including eye-movement testing, finger-to-nose testing, as well as Rombert testing are entirely normal or show signs of symptom amplification, for example non-physiological slowed movements during finger-to-nose testing, and her entirely normal Rombert test during distraction.

(Ex. 10.)

42. He concluded that while the Petitioner initially suffered from a concussion due to injury, she "has now developed a conversion disorder, which I believe is unrelated to her initial injury." (Ex. 10.)

43. He referenced numerous other evaluations from the records. He acknowledged her therapy for PTSD and anxiety. (Ex. 10.)

44. After the panel submitted their reports, the ERRB asked the Public Employment Retirement Administration Commission ("PERAC") to submit additional questions for clarifications to the doctors, which PERAC did. (Stipulated facts.)

45. In short, the Board asked follow-up questions regarding which third party testing the doctors relied on, whether other objective testing was, or could be, performed, and if they could comment on Dr. Mufson's conclusions that Petitioner suffered "no psychiatric disorder or neuropsychiatric disorder causally related to her work injury."[4] (Exs. 11, 13, and 15.)

46. The doctors provided supplemental opinions affirming their original conclusions. (Stipulated facts.)

47. Dr. Fisher reiterated that his diagnosis was based on a review of records. He believed his physical examination revealed balance and memory issues that supported a diagnosis of traumatic brain injury. He explained he did not conduct any formal testing for cognitive deficits:

> Such testing should have been performed prior to her being referred for PERAC evaluation if the Board had concerns that it was not a real medical issue. Neither a psychiatrist nor a neurologist can evaluation [sic] neuropsychological deficits in detail through a simple interview. One can have suspicions but without testing, one cannot definitely declare a Yes or No with diagnostic certainty.

He also failed to explain how or why his opinion differed from Dr. Mufson's (or any other assessments). (Ex. 12.)

48. Dr. Elfiky explained that he performed a physical examination, though such examination would neither "confirm nor repute the evidence of neurologic impairment as a result of post-concussion syndrome." (Ex. 14.)

---

[4] While it is not clear if the panel had every doctor evaluation available to them upon their first review, the parties agree the remaining evaluations were provided when PERAC forwarded these additional questions. Thus, while the panel may not have had Dr. Mufson's report initially, it had his report before responding to PERAC's questions.

49. He focused on the Petitioner's medical records more than her physical presentation, because she does not experience her symptoms consistently. As for how his opinion differed from Dr. Mufson, he stated that such a question was better suited for an "independent neurologist." His examination and opinions "are on the perspective of an internal medicine physician." (Ex. 14.)

50. Dr. Vardeh was asked to explain whether his diagnosis of "conversion disorder" was a neurological or psychological disorder. He explained it was psychological:

> A functional neurological disorder, sometimes called conversion disorder, features neurological symptoms that cannot be explained by an underlying neurological or other medical condition. . . I was unable to detect objective evidence of a medical or neurological disease. In addition, in my opinion, there was significant symptom amplification, suggestive of malingering. Malingering and conversion disorder are often hard to distinguish with confidence. Malingering might however not be permanent given certain circumstances, while conversion disorder might prove to be much more refractory and permanent. This is because malingering is actively controlled by the patient, whereas a conversion disorder is of subconscious nature.

(Ex. 16.)

51. Following these responses, the ERRB again reached out to PERAC. It asked PERAC to send additional clarification questions to Dr. Vardeh and also to replace Dr. Fisher. The Petitioner's counsel opposed the request. (Stipulated facts.)

52. PERAC denied both requests. It did not see any "need for further clarification" by Dr. Vardeh. "Given that Dr. Vardeh diagnosed her with 'conversion disorder' and clarified in his addendum that he was 'unable to detect objective evidence of a medical or neurological disease,' it appears that his diagnosis is that it is a psychological disorder." (Ex. 19.)

53. As for the request to replace Dr. Fisher, it explained:

> Dr. Fisher neither utilized an improper standard nor lacked pertinent information. He answered the statutory questions he was required to answer, as well as numerous additional questions from the Board that he is not required to answer under Chapter 32. Based on the information contained within his certificate, narrative and addendum, PERAC is confident that the Board can make an informed decision.

(Ex. 19.)

54. The ERRB ultimately denied the Petitioner's application:

> [T]he Board determined that there was insufficient evidence to conclude that Ms. Rogers had proven, by the evidence's preponderance, that Ms. Rogers' April 16, 2016 injury proximately caused any permanent incapacity from which she suffers. As you know, the Board attempted to seek further clarification from two (2) of the three (3) Regional Medical Panel physicians, and because PERAC denied the Board's request (which Ms. Rogers opposed), the Board was not satisfied with the evidence before it to award Ms. Rogers accidental disability retirement.

(Ex. 1.)

DISCUSSION

The Petitioner has the burden of proving every element of her disability claim. *Lisbon v. Contributory Ret. App. Bd*., 41 Mass. App. Ct. 246, 255 (1996); *Frakes v. State Bd. of Ret.*, CR-21-0261, 2022 WL 18398908 (Div. Admin. Law App. Dec. 23, 2022). "Accidental disability requires three elements: 1) that the applicant was 'mentally or physically incapacitated for further duty,' 2) that her 'incapacity is likely to be permanent,' and 3) that her disability 'is such as might be the natural and proximate result of the accident or hazard undergone.'" *Carreiro v. New Bedford Ret. Bd.*, CR-21-0355, 2023 WL 4846320 (Div. Admin. Law App. Jul. 21, 2023), *citing* G.L. c. 32, § 6(3)(a).

To receive accidental disability, a Petitioner must show they sustained their injuries from either a specific event or series of events. *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996). The event, or events, must be "a significant contributing cause to

[the] employee's disability." *Robinson's Case*, 416 Mass. 454, 460 (1993). While a positive medical panel is "some evidence on the question of causation . . . it is not determinative." *Warren v. Boston Ret. Bd.*, CR-13-199, 2022 WL 16921473, *16-17 (Div. Admin. Law App. Sept. 30, 2022). Rather, "[t]he ultimate finding on causation is left to the retirement board to determine, considering all the evidence, both medical and non-medical." *Id*. at *17, *citing Wakefield Contributory Ret. Bd. v. Contributory Ret. App. Bd.*, 352 Mass. 499 (1967).

For the reasons explained below, the Petitioner did not meet her burden to prove that whatever symptoms she may suffer from now are on account of a neurological condition she acquired because of the fall at work. At best, there is equally compelling expert evidence that she *might* still be suffering from post-concussive syndrome but also that she *might* be suffering from a conversion disorder (or related psychological issues). Because the Petitioner has the burden of proof, when competing experts offer equally plausible opinions "the preponderance of the evidence would favor neither party." *See Bd. of Reg. in Medicine v. Peters*, RM-20-0299 (Div. Admin. Law App. Sept. 30, 2021), *adopted in part* by Board, Feb. 17, 2022; *cf. Commonwealth v. Berry*, 393 Mass. 793, 796 (1985), *citing Commonwealth v. Carter*, 306 Mass. 141, 147 (1940) ("When the evidence tends equally to sustain either of two inconsistent propositions, neither of them can be said to have been established by legitimate proof"). Even then, describing the expert opinions as equally compelling is generous; in reality, the evidence is stronger against the Petitioner than for her.

The Board's first argument is that the Petitioner fails to meet her burden because there is no objective evidence of a neurological disorder. Instead, it argues she likely is exaggerating her symptoms to obtain accidental disability. But nothing limits an applicant from relying exclusively on subjective descriptions of symptoms that cannot be objectively

verified. Rather, "the 'degree to which an applicant's report of subjective symptoms should be credited is a medical question beyond the common knowledge and experience of the retirement board.'" *Underwood v. Boston Ret. Sys.*, CR-210353, 2024 WL 4582630 (Div. Admin. Law App. Jul. 26, 2024) at *25, *quoting Back v. Barnstable Cnty. Ret. Bd.*, CR-18-361, 2020 WL 13607017, at *11 (Div. Admin. Law App. Nov. 13, 2020). That is why deference is due to the medical panelists, whose opinions are the starting point for our analysis. But that "deference is not inexorable or limitless. Where, for example, 'there is conflicting expert testimony, the fact finder may completely discount the testimony of one expert and rely exclusively on the other.'" *Id*., *quoting Robinson v. Contributory Ret. App. Bd*., 20 Mass. App. Ct. 634, 639 (1985). While I ultimately agree with the Board, it is not *because* the Petitioner cannot objectively verify her condition. That matters, and I weigh that in my decision. But that alone is not dispositive. Rather, I place greater weight on the various compelling, independent assessments and little weight on the majority panelists' unconvincing reports.[5]

Start with the medical panel. Dr. Elfiky is an internist. As he admits, his opinion is from the perspective "of an internal medicine physician." He relied on his review of the records, and not on the Petitioner's physical presentation. When asked to explain why he parts from Dr. Mufson's opinion, he said that question is "better suited for an independent

[5] The Petitioner's testimony did not add much to the analysis. She explained various symptoms that she has experienced since her fall. Putting aside the fact that her symptoms cannot be objectively verified, they are consistent with both a neurological disorder, e.g. post-concussive syndrome, and a psychological disorder, e.g. conversion disorder. Thus, I need to look beyond her description of her symptoms in evaluating her claim.

The Board suggests another possibility: that she is experiencing no symptoms at all and is fabricating her claims. However, I do not find that to be the case.

neurologist." However, given that this case involves claims of neurological diagnoses, this deflection is not reassuring. Dr. Elifky seems to imply he is not suited to draw neurological conclusions, at least not in this case. Whether that is what he means or not, that is how I interpret his opinion. I thus place no weight on it.

That leaves two panelists. Of the two, only Dr. Fisher supports the Petitioner's application. Dr. Fisher, who is a neurologist, nevertheless explained that neither a neurologist nor a psychologist could evaluate neuropsychological deficits through a simple interview. Yet that is all he did. His first report was sparse and lacked substance. His supplemental report was slightly more detailed, but not by much. Although specifically asked to explain why he parted ways with Dr. Mufson, he failed to do so. In fact, he did not reference any of the numerous independent assessments questioning the neurological origin of the Petitioner's symptoms. I thus place very little weight on his opinion. *See Sam S. v. Haverhill Ret. Bd.*, CR-21-0239, 2023 WL 3687349 (Div. Admin. Law App. May 5, 2023), *citing Adoption of Stuart*, 39 Mass. App. Ct. 380, 382 (1995) (failure "to grapple with" facts calls conclusions into question).

In contrast to these opinions, Dr. Vardeh clearly considered and incorporated the independent evaluations. He explained his reasoning in his first report. In his supplemental report, he further explained what it might look like to have a conversion disorder and why that might even be mistaken for malingering. To his credit, he did not say the Petitioner was malingering. Rather, he pointed out that if she has a conversion disorder, she has little to no control over it. Nevertheless, he was clear that whatever affects her, the Petitioner does not suffer now from a neurological disorder.

Based on only the medical panel opinions, it would be hard to draw many conclusions in favor of the Petitioner. That opinion is only strengthened by reference to the independent medical reports and other medical records. Drs. Mufson and Safran provided the most detailed and well-reasoned reports, both concluding the Petitioner does not suffer from a neurological condition. Other doctors may not have been so overt in their conclusions, but they affirmed that much of what is driving the Petitioner's symptomology is likely psychological:

- Therapist notes say the "diagnostic impression is complex PTSD, developmental trauma, rule out dissociation." (Ex. 20, pg. 83.)

- Dr. Erdos diagnosed her with "generalized anxiety disorder and passive dependent personality traits which antedated the injury." He questioned whether she suffered a concussion at all. In any event, he added that if she did, the symptoms should have resolved quickly and completely. He opined she did not suffer from psychiatric disability but, rather, has "long-standing anxiety and pre-existing personality profile such that she is prone to expressing psychological conflict in terms of physical symptoms." (Ex. 20, pgs. 136, 594.)

- Dr. Nowell concluded she had a minor cognitive disorder and adjustment disorder with mixed emotional features. Her "presentation would be consistent with reactive depression and anxiety of moderate severity."

- Several doctors recommended some form of psychotherapy over any further medical intervention.

    - Dr. Robertson felt "that psychotherapy will be much more beneficial than medication."
    - Dr. Ersing referred her to a therapist who further referred her to Dialectical Behavioral Therapy.
    - Dr. Safran recommended further psychiatric treatment.

In other words, the Petitioner's pre-accident personality profile and psychological issues could explain why she might experience these physical symptoms independent of her post-concussion syndrome. Without these pre-existing issues, there may have been a clearer picture as to what is causing her symptoms. But with them the picture is, at best, murky. That is not enough to meet her burden of proof.

Other facts support this conclusion. The Petitioner's symptoms gradually improved after the accident. They only worsened when faced with stress and "insensitive/impatient managerial oversight" from work. Yet, she was able to perform her (scaled back) duties before she was terminated. After that, when she distanced herself from work stress, other symptoms improved again.

Her own testimony did not advance her case. It was inconsistent and contradicted by some medical records. She could not remember things she supposedly told doctors and at times disagreed she said them altogether. I do not expect someone to remember everything they told every doctor, especially when someone has been subject to so many evaluations. But I also do not expect someone to forget so many prior statements and flat out disagree she made multiple statements that are well-documented. Unlike the Board, I do not attribute this inconsistency to malingering; I do not find the Petitioner's testimony was deceitful. There are lots of other reasons why someone might make these statements. Thus, I do not doubt the Petitioner's sincerity. However, I do doubt her accuracy.

Lastly, the Petitioner's current symptoms could be on account of a psychological disorder, such as conversion disorder. At the hearing, I asked the parties whether, if that was the case, there was a possibility that this psychological disorder was "caused" by her workplace accident because it may have developed on account of her post-concussion disorder that all agree was caused by her accident. In the end, there are several problems with this theory. First, the Petitioner's application did not rely on a psychological disorder but simply her post-concussion syndrome. Second, the Petitioner did not advance this argument at the hearing or in her closing briefs. Finally, the only doctor to address this, Dr. Vardeh,

specifically said he did not believe her conversion disorder was caused by the workplace accident.

CONCLUSION

ERRB's decision denying the Petitioner's application for accidental disability benefits is hereby **affirmed**.[6]

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

_____

Eric Tennen
Administrative Magistrate

[6] Because I hold the Petitioner has not met her burden, I need not decide whether PERAC should have allowed ERRB to ask further clarifying questions of Dr. Fisher or replace him altogether. I simply make the following observations.

PERAC must forward an initial clarification request from Boards to the medical panel. 840 Code of Mass. Regs. § 10.11(2) (PERAC "shall forward such a request to the medical panel"). However, PERAC has the power to decide whether further requests for clarification should be allowed. *Id*. ("PERAC shall decide whether any further board requests for clarification are warranted"). It is not clear whether DALA is empowered to review these decisions. *Cf. Bristol Cnty Ret. Bd. v. Contributory Ret. App. Bd.*, 65 Mass. App. Ct. 443 (2006). At best, the Board argues PERAC was "plainly wrong," which suggests DALA can review PERAC's actions for an abuse of discretion. If that's the case, given PERAC's explanation of why it refused to take any further action, it is hard to see how PERAC abused its discretion in denying the Board's requests.