

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Susan Ruggiero,
Petitioner

v.

Docket No. CR-22-0304

Boston Retirement System,
Respondent

Appearance for Petitioner:

Bryan Decker, Esq.
Decker & Rubin, PC

Appearance for Respondent:

Natacha Thomas, Esq.
Boston Retirement System

Administrative Magistrate:

Melinda E. Troy, Esq.

SUMMARY OF DECISION

The Respondent's decision to deny the Petitioner's application for accidental disability retirement pursuant to G.L. c. 32, § 7, is affirmed. The Petitioner has not proven that she was injured "as a result of and while in the performance of" her duties as a Boston Police Officer. Further, the Regional Medical Panel which examined her properly carried out its function. The majority of the Panel, although it did not support her application, did not lack pertinent information, employ an erroneous standard, or issue a medical Panel certificate that was "plainly wrong". The Petitioner is not entitled to accidental disability retirement.

PROCEDURAL BACKGROUND

This appeal concerns the Respondent Boston Retirement System's ("BRS") denial of the Petitioner's application for accidental disability retirement. The BRS denied the application because a majority of the Regional Medical Panel ("Panel") which examined her did not support

her application, finding that she was not physically incapable of performing the essential duties of her position. The Petitioner filed a timely appeal of the BRS's decision.

The parties submitted a joint pre-hearing memorandum in support of their respective positions before the Division of Administrative Law Appeals ("DALA"), along with 11 joint exhibits. I marked that pleading as Pleading A. In addition to citing the majority Panel opinion as grounds for its denial, in the pre-hearing memorandum, the BRS argued that Ms. Ruggiero is ineligible for benefits pursuant to G.L. c. 32, § 7 as a matter of law because she was not injured "as a result of and while in the performance of" her duties as the law requires. G.L. c. 32, § 7.

I held an in-person evidentiary hearing on January 22, 2024, at the DALA offices in Malden, MA. I digitally recorded the hearing with the parties' consent. The Petitioner was the sole witness. In addition to the joint memorandum and exhibits, each party filed a post-hearing memorandum on July 22, 2024, at which time the record closed. I marked the Petitioner's post-hearing memorandum as Pleading B and the Respondent's post-hearing memorandum as Pleading C. I have included an exhibit list as an addendum to this decision.

FINDINGS OF FACT

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties' written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. The Petitioner, Susan Ruggiero ("the Petitioner" or "Ms. Ruggiero"), is an "active but injured" police officer at the Boston Police Department ("BPD"). She began working there on March 20, 1996 but has had some breaks in service. She was assigned to work patrol in three different districts during the course of her career. (Testimony; Exhibit 3.)

2. Prior to May 2020, Ms. Ruggiero suffered two on-the-job injuries while employed by BPD: a motor vehicle accident (the exact date of the incident and nature of any injuries she sustained was not specified) and a shoulder injury. Ms. Ruggiero made a full recovery and resumed full duties following each of these injuries. (Testimony.)
3. Ms. Ruggiero sustained the injury upon which her accidental disability retirement application is based on May 30, 2020. Prior to that date, she had been working full-time, full-duty. (Testimony.)
4. On May 30, 2020, Ms. Ruggiero was assigned to BPD District 18 in Hyde Park, MA. She was assigned to the service unit. Service unit officers respond to 911 calls and complete necessary paperwork, including writing reports. (Testimony.)
5. On that date, Ms. Ruggiero responded to a call assigned to her. She returned to the station to write the report documenting the incident. (Testimony.)
6. At approximately 6:20 PM, Ms. Ruggiero “tripped on the trash barrel while trying to exit the downstairs lady’s [sic] room.” She did not lose consciousness or fall to the ground. (Testimony; Exhibit 5¹.)
7. Ms. Ruggiero injured her head, neck, and back. She experienced numbness and tingling in both hands, ringing in her ears, and trouble with her vision. (Testimony; Exhibit 5.)
8. Ms. Ruggiero was transported to the Brigham and Women’s Hospital emergency department via ambulance. She received treatment, was diagnosed with a concussion and was discharged. (Testimony; Exhibits 5 and 11.)

¹ Ms. Ruggiero wrote the Incident Report and letter to her Captain contained in Exhibit 5. Therefore, I find these first-hand reports, made shortly after the incident, reliable accounts of the incident on May 30, 2020.

9. Ms. Ruggiero has not worked since the incident on May 30, 2020. She receives compensation pursuant to G.L. c. 41, § 111F. (Testimony; Exhibit 1.)
10. On September 2, 2021, Brian Morris, M.D. (who specializes in occupational medicine) completed a Physician's Statement for Ms. Ruggiero, stating that her medical diagnoses were "post-traumatic headache, neck strain, right shoulder/arm strain, lumbar strain [and] left knee pain." Dr. Morris stated that Ms. Ruggiero's "headaches and orthopedic complaints restrict her from all essential job functions." (Exhibit 2.)
11. By application dated September 9, 2021, Ms. Ruggiero applied for accidental disability retirement based on the injuries she sustained on May 30, 2020. The stated basis of her application was a "...concussion and injuries to [her] head, neck and back." She stated that she has "had severe neurological and physical limitations since...." (Exhibit 1.)
12. In her disability application, Ms. Ruggiero described how the incident occurred more vaguely than she had in the incident report, stating only that "while on duty in police station, I tripped and smashed my head into a metal door." (Exhibit 1.)
13. In April 2022, the members of a Regional Medical Panel individually examined Ms. Ruggiero to determine her eligibility for accidental disability retirement. The Panel consisted of Daniel Vardeh, M.D. and Julian Fisher, M.D. (each of whom specializes in neurology and neurosurgery), and Ryan Friedberg, M.D. (who specializes in orthopedics). (Exhibits 6-8.)
14. A majority of the Panel found that Ms. Ruggiero was not physically incapable of performing the duties of a BPD officer. (Exhibits 6-8.)

15. Dr. Vardeh examined Ms. Ruggiero on April 9, 2022. Dr. Vardeh tested her cranial nerves, strength, sensory ability, reflexes and balance, as well as doing some “crude cognitive testing.” Based on his examination, Dr. Vardeh stated that Ms. Ruggiero’s “overall symptom constellation is benign and her neurological exam ... unremarkable, and therefore she is able to return to her previous duty.” Consequently, he answered “No” to Question One on the Medical Panel Certificate. (Exhibit 6.)
16. Dr. Fisher supported Ms. Ruggiero’s application and answered “Yes” to all three questions on the Medical Panel Certificate. Dr. Fisher diagnosed Ms. Ruggiero with “post-concussion syndrome with recurrent headache of a complex nature with nausea and dizziness.” Dr. Fisher found that “she also manifests some subtle right lower extremity weakness and incoordination in gait.” (Exhibit 7.)
17. Dr. Friedberg examined Ms. Ruggiero on April 27, 2022. He answered “No” to Question One on the Medical Panel Certificate. (Exhibit 8.)
18. Dr. Friedberg opined that Ms. Ruggiero did not have a disability such that she is incapable of performing essential job duties. Specifically, Dr. Friedberg opined:
- I feel, from a purely orthopedic standpoint, the injury she has sustained from the work injury on May 30, 2020, did not give her any significant injuries that would lead to her inability to work as a police officer. Once again, as I am not a neurologist, I would not further comment on her ongoing neurologic symptoms, her balance issues, her chronic headaches. I would defer this to a neurologist with regard to incapacity, permanency, and causation.
- (Exhibit 8.)
19. At its meeting held on July 20, 2022, the BRS denied Ms. Ruggiero’s application for accidental disability retirement, citing the certificates and reports of the majority of the Panel as the basis for its decision. The BRS notified Ms. Ruggiero by correspondence dated that same day. (Exhibit 10.)

20. By correspondence dated July 29, 2022, Ms. Ruggiero's counsel filed a timely appeal on her behalf and the matter was referred to DALA for a hearing. (Exhibit 9.)

DISCUSSION

The BRS denied Ms. Ruggiero's application because a majority of the Regional Medical Panel did not support it. Subsequently, the BRS's counsel also raised the issue that Ms. Ruggiero's application failed as a matter of law because she cannot show that she was injured "as a result of and while in the performance of" her duties at BPD as G.L. c. 32, § 7 requires. I will discuss each issue, but I will start with the threshold issue of whether Ms. Ruggiero is entitled to accidental disability retirement as a matter of law. For the reasons discussed below, I find that she has not shown that she was injured "as a result of and while in the performance of" her duties as is required by G.L. c. 32, § 7. Therefore, she is not entitled to accidental disability retirement.

However, even if Ms. Ruggiero could show that she was in the performance of her duties when she was injured on May 30, 2020, her claim would fail. The Panel which examined her did not lack pertinent facts, apply an erroneous standard, or issue Panel certificates and reports that were "plainly wrong". As such, the Panel properly carried out its function.

Whether the Petitioner was in the performance of her job duties at the time of the injury

As a threshold matter, to be entitled to accidental disability retirement, an applicant must show that she was permanently disabled from performing the essential duties of her job "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(1). Benefits awarded under G. L. c. 32, § 7(1) are "only for those who experience a personal injury not merely as a result of the performance of work duties, but during the performance of

these duties as well.” *Retirement Board of Salem v. Contributory Retirement Appeal Board*, 453 Mass. 286, 291 (2009). The requirements “are conjunctive.” *Boston Retirement Board v. Contributory Retirement Appeal Board*, 340 Mass. 109, 111 (1959). These requirements are also strictly construed. *Murphy v. Contributory Retirement Appeal Board*, 463 Mass. 333, 348 (2012) (internal citations omitted). The mere fact that an employee is in her office during regular work hours does not necessarily mean that the employee is engaged in “the actual performance of the duties that the employee has undertaken to perform on behalf of the public.” *Damiano v. Contributory Retirement Appeal Board*, 72 Mass. App. Ct. 259, 263 (2008). Whether an employee is so engaged when they are injured is a fact that must be proven by the applicant for benefits. *Murphy*, *supra* at 333.

Generally speaking, an individual cannot be awarded accidental disability retirement if the employee is injured while going to or returning from a break. *Boston Retirement Board*, *supra* at 111. However, if an individual can show that she sustained an injury while “going from one place at which she had an employment obligation to another such place” an award of benefits would be possible. *Namvar v. Contributory Retirement Appeal Board*, 422 Mass. 1004, 1005 (1996). Against this legal framework, Ms. Ruggiero’s claim that she was injured in the performance of her duties fails.

To properly evaluate her claim for benefits, one must understand how Ms. Ruggiero was injured in 2020. When an applicant offers different accounts of how she was injured, the applicant may not meet her burden to prove that she was injured in the performance of her duties. *Bechis v. State Board of Retirement*, No. CR-10-08 (Div. Admin. Law App. Jul. 25, 2014) (insufficient evidence to prove that applicant was injured in the performance of her duties

because the accounts of how she was injured stated in her DALA testimony, her application and to the Regional Medical Panel were all different).

In this case, Ms. Ruggiero, like the Petitioner in *Bechis*, described how her injury occurred in a number of different ways. In her first notice of injury filed with the BPD on May 30, 2020, the date of the incident, Ms. Ruggiero stated that she “tripped on the trash barrel while trying to exit the downstairs lady’s [sic] room.” Her September 2021 application for accidental disability benefits described the incident more vaguely, stating only that “while on duty in police station, I tripped and smashed my head into a metal door.” By the time she testified at the hearing, Ms. Ruggiero’s description was yet again different. She stated that she finished writing a report, used the restroom, and was injured while exiting the restroom on her way to her cruiser to “clear the call.”

I find that Ms. Ruggiero’s first account of how her injury occurred (that is, the description contained within her notice of injury) is credible because it was written contemporaneously with her injury -- completed the day of the incident itself. It contained the most detail of the three accounts in the record and was not written with any secondary motivation in mind such as obtaining accidental disability benefits. As a result, it is the least self-serving of all of the accounts in the record and I afford it greater weight than the two other later descriptions that Ms. Ruggiero provided. *See Conway v. Public Employees Retirement Administration Commission*, No. CR-11-195, 2016 WL 11956813 (Contrib. Ret. App. Bd. July 25, 2016) (rejecting witness testimony as self-serving because of witness’s financial interest in the case outcome).

I do not credit Ms. Ruggiero’s later accounts of how her injury occurred. Unlike her initial notice of injury, both her 2021 application (which vaguely stated only that her injury occurred “while on duty”) and her 2024 hearing testimony (which for the first time described her

injury as occurring when she was returning to her cruiser to “clear the call”) seemed to seek to obscure the fact that she was injured while using the ladies room. It appears that Ms. Ruggiero was attempting to fit her case within the narrow exception that one can be considered to be “in the performance of” their duties when traveling from one place where they have a work obligation to another such place, within the meaning of *Namvar, supra*. I decline to find that Ms. Ruggiero’s circumstances are the same as those described in *Namvar*.

Based on the evidence in the record that was completed contemporaneously to her injury, I find that Ms. Ruggiero was taking a brief break to use the restroom when she was unfortunately injured in May 2020. Injuries sustained while using the restroom are not compensable. *Doucette v. State Board of Retirement*, No. CR-08-239 (Contrib. Ret. App. Bd. Feb. 17, 2011) (injury sustained walking from stall to bathroom sink not compensable); *Dupuis v. Massachusetts Teachers’ Retirement System*, No. CR-10-666 (Div. Admin. Law App. Oct. 4, 2013) (teacher did not sustain compensable injury when injured using the restroom even when duties included bathroom monitoring); *Fortier v. Teachers’ Retirement Board*, No. CR-02-730 (Contrib. Ret. App. Bd. Nov. 13, 2003) (same).

Similarly, injuries sustained while leaving the restroom are also not compensable because they are not sustained while in the performance of a job duty. *Morales v. Holyoke Retirement Board*, No. CR-06-649 (Div. Admin. Law Appeals Feb. 5, 2008) (thumb injury sustained while opening bathroom door to return to work not compensable). Consequently, Ms. Ruggiero, who tripped while trying to exit the ladies’ room at the precinct, has failed to prove that she was injured “as the result of and while in the performance of” her duties as a BPD officer. She is not entitled to accidental disability benefits pursuant to G.L. c. 32, § 7.

The Panel Majority did not err in concluding that Ms. Ruggiero was not disabled

Even if she could prove that she was injured as the result of and while in the performance of her duties, Ms. Ruggiero's application faces another hurdle. A majority of the Panel did not support her application, finding that she was not physically incapable of performing the duties of a BPD officer. Ms. Ruggiero argues that Dr. Friedberg, one of the physicians who did not support her application, improperly carried out his duties as a member of the Panel. For the reasons that follow, I disagree.

A Regional Medical Panel is comprised of three physicians who, "so far as practicable, [are] skilled in the particular branch of medicine or surgery involved in the case." G.L. c. 32, § 6(3)(a). The Panel addresses medical questions that are "beyond the [board's] common knowledge and experience." *Malden Retirement Board v. Contributory Retirement Appeal Board*, 1 Mass. App. Ct. 420, 423 (1973). The physicians shall examine the employee to certify that they are unable to perform essential job duties, the incapacity is likely permanent, and the incapacity is "such as might be the natural and proximate result of the accident or hazard undergone." G.L. c. 32, § 6(3)(a). A positive Panel requires "a certification of such incapacity by a majority of the physicians." G.L. c. 32, § 7(1). A medical panel certificate answering in the affirmative to the questions of incapacity, permanence and causation is a condition precedent to granting accidental disability retirement. *Quincy Retirement Board v. Contributory Retirement Appeal Board*, 340 Mass. 56, 60 (1959); see also *Campbell v. Contributory Retirement Appeal Board*, 17 Mass. App. Ct. 1018, 1019 (1984).

A Panel's negative response to any question may be overcome only in limited circumstances. To do so, the Petitioner must demonstrate the Panel employed an erroneous legal standard, followed improper procedure, or was "plainly wrong." *Kelley v. Contributory*

Retirement Appeal Board, 341 Mass. 611, 617 (1961). The Petitioner does not have an opportunity to have a retrial of the medical facts of the case, where the Panel applied proper procedures and correct principles of law. *Kelley, supra* at 617. Ms. Ruggiero did not show that her Panel examination was improper. Therefore, she is not entitled to the relief that she seeks, which is to invalidate the Panel certificate and report filed by Dr. Friedberg.²

Ms. Ruggiero concedes that Dr. Friedberg, an orthopedist, was “competent” to be named to the Panel. (Petitioner’s Closing brief at page 6.) However, she argues that he should be replaced on the Panel because “he refused to state his opinion on whether the neurological symptoms from which Officer Ruggiero suffers are disabling.” *Id.* For the reasons that follow, the argument that the opinion that Dr. Friedberg offered was flawed is without merit.

Ms. Ruggiero applied for accidental disability retirement based on “a concussion and injuries to [her] head, neck, and back.” She stated that she has “had severe neurological and physical limitations since....” The treating physicians she listed on her application were her primary care physicians, an orthopedist, a speech therapist, and a concussion specialist. Although she listed a neurologist, William Mullaly, M.D., she noted that her first appointment with him was “upcoming 9/28/2021”. Any ongoing neurological treatment that she had received by the dates of the Panel exams would have been limited at best.³ Her “Physician Statement” was provided by a specialist in occupational medicine.

² Ms. Ruggiero does not challenge the validity of the Panel certificates and reports completed by either Dr. Vardeh or Dr. Fisher, so they will not be discussed further in this decision.

³ The medical records included with Exhibit 11 are dated as late as June 2021. Although Dr. Vardeh mentions in his Panel report that Ms. Ruggiero “was evaluated by neurology at Faulkner Hospital on 9/28/21” the records documenting that medical appointment are not included in Exhibit 11.

As noted, General Laws c. 32, § 6(3), states that the members of a Panel “shall, so far as practicable, be skilled in the particular branch of medicine or surgery involved in the case.” The Panel that examined Ms. Ruggiero consisted of two neurologists and one orthopedist. The Panel was appropriately composed based on Ms. Ruggiero’s application containing neurologic and orthopedic complaints. The Panel composition reflected her complaints and “was consistent with the specialties of the physicians who treated” Ms. Ruggiero following her injury. *Palmer v. Boston Retirement Board*, No. CR-13-575 at *23 (Div. Admin. Law App. Nov. 20, 2015). Ms. Ruggiero “did not present evidence to show [Dr. Friedberg, as the only orthopedic specialist on the Panel,] could make no significant contribution to address the medical issues raised by [her] claim.” *LaRange v. Worcester Retirement Board*, No. CR-94-1136 (Div. Admin. Law App. Mar. 5, 1996) (citing G.L. c. 32, § 6(3)).

Additionally, two out of the three physicians (a majority) on the Panel were neurologists and they addressed her neurological condition, although one supported her application and one did not. Consequently, it is unclear what benefit having an additional neurological opinion in the record would provide. This is particularly true when one considers that adding a third neurologist to the Panel would then necessarily preclude the participation of an orthopedist to evaluate Ms. Ruggiero’s orthopedic complaints. Excluding an orthopedist from the Panel would also be inappropriate given that most of Ms. Ruggiero’s medical records reflect the treatment she received for orthopedic injuries and she has based her application, in part, on those orthopedic injuries.

Finally, with regard to her specific objection that Dr. Friedberg, an orthopedist, should have addressed Ms. Ruggiero’s neurological complaints, that claim fails. An orthopedist can offer a competent opinion only on orthopedic conditions or injuries, not neurological conditions,

which is a separate inquiry. *Markos v. Haverhill Retirement Board*, No. CR-21-0579, 2024 WL 4475614 at *19 (Div. Admin. Law App. Oct. 4, 2024) (rejecting a Panel member’s opinion because “as an orthopedist, he could competently say that she did not have an orthopedic injury, but that had no necessary bearing on whether she has a neurologic injury”). Dr. Friedberg properly limited his comments and conclusions to Ms. Ruggiero’s orthopedic condition given his medical specialty in orthopedics. Contrary to the Petitioner’s argument, Dr. Friedberg did not apply an erroneous standard when he evaluated Ms. Ruggiero. There are no grounds on which to invalidate the Panel certificate and report that he provided.

CONCLUSION

For all of the foregoing reasons, the Boston Retirement System’s decision to deny the Petitioner’s application for accidental retirement benefits is affirmed.

SO ORDERED,

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy

Administrative Magistrate

Dated: August 1, 2025

EXHIBITS

1. Ms. Ruggiero’s Accidental Disability Retirement Application
2. Dr. Brian Morris’ Physician Statement in support of the application
3. BPD Employer Statement
4. BPD Officer Job Description

5. BPD Injury/Incident Report
6. Dr. Daniel Vardeh's Medical Panel Certificate
7. Dr. Julian Fisher's Medical Panel Certificate
8. Dr. Ryan Friedberg's Medical Panel Certificate
9. Boston Retirement System's Notice of Denial
10. Petitioner's Notice of Appeal
11. Ms. Ruggiero's Medical Records