

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**KEVIN SANKO,**

**Petitioner-Appellee**

**v.**

**WORCESTER REGIONAL RETIREMENT BOARD,**

**Respondent-Appellant.**

**CR-12-659**

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**DECISION**

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Respondent Worcester Regional Retirement Board (WRRB) appeals from an amended decision after remand of an administrative magistrate of the Division of Administrative Law Appeals (DALA), reversing its decision denying petitioner Kevin Sanko's application for accidental disability retirement benefits. A remand hearing was held on December 7, 2017. The DALA magistrate admitted additional exhibits marked 32-35B. The magistrate's decision is dated April 27, 2018. WRRB filed a timely appeal to us.

After considering the arguments by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt its original Findings of Fact 1 -15 and its additional Findings of Fact 16 – 40 as our own. We affirm the DALA decision adding the following.

*Serious and Willful Misconduct*

In our decision of May 25, 2017, we determined that the record was insufficient to allow a determination of whether Mr. Sanko's participation in a single chain towing procedure and his riding in the truck during that towing were "willful" misconduct. We indicated that this must be weighed against the fact that Mr. Sanko was instructed so by his supervisor. We also indicated that it was necessary to evaluate the circumstances surrounding Mr. Sanko's failure to refasten

his seatbelt. We remanded this matter back so that the record could be sufficiently developed to address the issue of willfulness. *Sanko v. Worcester Regional Retirement Bd.*, CR-12-659 at \*7-8 (CRAB May 25, 2017).

We agree with the magistrate that Mr. Sanko's actions during the events of February 26, 2008 did not amount to "serious and willful misconduct." The magistrate found the events of that night were "fluid" and "moved quickly," crediting testimonies of Mr. Sanko and Mr. Thomas Wood as discussed in her decision.<sup>1</sup> The magistrate is allowed to accept whole or part of testimonies provided. *Lydon v. Boston Elevator Ry.*, 309 Mass. 205, 206 (1941); *Commonwealth v. Zanetti*, 454 Mass. 449, 457 (2009); *Commonwealth v. James Coffman*, 84 Mass. App. Ct., 33 (2013). In her determination, she concluded that Mr. Sanko committed no violation of a statute or regulation<sup>2</sup> and that his failure to refasten his seatbelt did not constitute willful, wanton and reckless misconduct. We, too, find that Mr. Sanko's actions did not amount to deliberate or knowing disregard of serious danger.<sup>3</sup> As we noted in our prior decision, "willfulness must be something beyond mere negligence – it is more than failure to comply with a duty of care, or even 'gross' failure to do so..." *Sanko* at \*8. Moreover, the magistrate determined Mr. Sanko did not violate any statute or regulation. In our affirmance of the DALA decision, we give some deference to the magistrate's findings and where, as here, credibility of

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<sup>1</sup> *Sanko v. Worcester Regional Retirement Bd.*, CR-12-659 (DALA Apr. 27, 2018) at \*13-14.

<sup>2</sup> The applicable statute considered by the magistrate was G.L. c. 90, §§ 13A and 13A(e) and they state in pertinent parts:

G.L. c. 90, § 13A:

No person shall operate a private passenger motor vehicle or ride in a private passenger motor vehicle, a vanpool vehicle or truck under eighteen thousand pounds on any way unless such person is wearing a safety belt which is properly adjusted and fastened; provided, however, that this provision shall not apply to:...

(e) anyone involved in the operation of taxis, liveries, tractors, trucks with gross weight of eighteen thousand pounds or over, buses, and passengers of authorized emergency vehicles...

We note that while the magistrate cited Section 14A(e) in her decision, we believe this to have been a scrivener's error and that she meant to cite to Section 13A(e).

<sup>3</sup> See Footnote 20 in our decision *Sanko*, CR-12-659 at \*8.



witness testimony is at issue, her findings are entitled to substantial deference. *Vinal v. Contributory Retirement Appeal Bd.*, 13 Mass. App. Ct. 85, 430 N.E.2d 440 (1982).

*"As a result of" work duties*

Secondly, in our prior decision, CRAB saw no basis to disturb the determination that Mr. Sanko's injury occurred "while in the performance of" his work duties. *Sanko* at \* 9. However, G.L. c. 32, § 7 requires that Mr. Sanko must establish that he was performing a work duty at the time of his injury and that his injury must have occurred "as a result of" a work duty. The requirements are conjunctive. See *Boston Retirement Bd., v. Contributory Retirement Appeal Bd.*, 340 Mass. 109, 111 (1959). On remand, we ordered that the magistrate consider and the parties brief (1) whether Mr. Sanko would have injured his right shoulder on February 26, 2008 if he had been wearing his seatbelt and (2), if the answer is "no," whether he had failed to show that his injury occurred "as a result of" his work duties. *Sanko* at \* 11.

Despite our order, the magistrate failed to make a determination as to whether Mr. Sanko's injury occurred "as a result of" his work duties. However, she did conclude that Mr. Sanko would not have been injured had he been wearing his seatbelt, but she determined that his failure to refasten his seatbelt did not amount to willful, wanton and reckless misconduct. Instead, the magistrate reiterated her determination that Mr. Sanko's injury occurred while in the performance of his duties. While she did not address the question of whether Mr. Sanko's injury occurred "as a result of" his work duties, we have determined that it is not necessary to remand this matter back again for this determination.

A hearing was held in which testimony was provided by Mr. Sanko and Mr. Wood regarding the events leading up to and including Mr. Sanko's injury of February 26, 2008. Following the analysis in *Jones v. Weymouth Retirement Bd.*, CR-04-181 (CRAB Sept. 30, 2005), we conclude that the testimonies and the evidence in the record demonstrate that Mr. Sanko's injury occurred "as a result of" his work duties.

In *Jones*, CRAB established that in compensation cases, fault is not a determining factor "unless it amounts to the 'serious and willful' misconduct of the employee which...bars all relief to him." *Jones* at \*3. For an injury to have occurred "as a result of" one's duties, the injury must have occurred "in the line of consequences resulting from the circumstances and conditions of the employment, and not who was to blame for it." *Id.* In other words, even though Mr. Sanko

would not have been injured had he refastened his seatbelt, this would not break the connection between his employment and his injury “if it can be seen that the whole affair had its origin in the nature and conditions of the employment, so that the employment bore to it the relation of cause to effect.” *Id.*

The magistrate determined that the events of February 26, 2008 were “fluid” and “moved quickly,” which may have contributed to Mr. Sanko’s failure to refasten his seatbelt. Even so, she determined that Mr. Sanko did not violate any statute or regulation. Regardless, when considering all the factors, including the events leading up to and including his injury as established in the record, we conclude that the basis of Mr. Sanko’s injury is attributed to “the nature, conditions, obligations or incidents of his employment.” *Zerofski’s Case*, 385 Mass at 592, quoting *Caswell’s Case*, 305 Mass. 500, 502 (1940). His failure to refasten his seatbelt did not break the connection between his employment and his injury because “the whole affair had its origin in the nature and conditions of the employment, so that the employment bore to it the relation of cause to effect.” *Jones*, CR-04-181 (CRAB Sept. 30, 2005). That is, Mr. Sanko’s injury occurred “in the line of consequences resulting from the circumstances and conditions of [his] employment.” *Id.* Thus, on all the evidence, findings are warranted that Mr. Sanko’s injury arose out of his employment.

The decision of the DALA magistrate is affirmed. Mr. Sanko is entitled to accidental disability retirement benefits.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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Uyen M. Tran  
Assistant Attorney General  
Chair  
Attorney General’s Appointee



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Nicolle M. Allen, Esq.  
Governor’s Appointee



A handwritten signature in dark ink, consisting of a large, stylized capital 'F' followed by a horizontal line and a small flourish.

Fariyda Mulrain, RN, BSN,  
Department of Public Health Appointee

Date: February 2, 2023