

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Eduardo A. Santana,**  
Petitioner

v.

Docket No. CR-22-0620  
Date Issued: April 25, 2025

**Cambridge Retirement Board,**  
Respondent

**Appearance for Petitioner:**

Timothy J. Smyth, Esq.

**Appearance for Respondent:**

James H. Quirk, Jr., Esq.

**Administrative Magistrate:**

Kenneth J. Forton

**SUMMARY**

A majority of the regional medical panel concluded that the Petitioner's disability was not the result of an aggravation of a workplace injury, but rather degenerative changes. The petitioner is therefore not entitled to retire for accidental disability. A certification of incapacity is a condition precedent to accidental disability retirement. The medical panel did not employ an erroneous standard, lack pertinent facts, or fail to follow proper procedures, nor was it improperly comprised, or "plainly wrong." *See Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 617 (1961).

**DECISION**

On December 23, 2022, Petitioner Eduardo Santana timely appealed, under G.L. c. 32, § 16(4), the December 12, 2022 decision of Respondent Cambridge Retirement Board denying Mr. Santana's application for accidental disability retirement. DALA

ordered the parties to file a joint pre-hearing memorandum, which they did on October 7, 2024, along with 10 agreed-upon proposed exhibits and 4 exhibits proposed by the Petitioner.

I held a hearing on February 10, 2025, which was conducted via Webex video conference. It was digitally recorded. After the parties submitted additional exhibits, I admitted into evidence 12 agreed-upon exhibits (Exs. 1-12) and 5 Petitioner's exhibits over the objection of the Board (Exs. A-E). Mr. Santana and his coworker, Brian Casey, both testified at the hearing. The Board called no witnesses. On March 14, 2025, the parties submitted post-hearing memoranda.

### **FINDINGS OF FACT**

1. Mr. Eduardo Santana was born in 1962. He was a full-time employee of the Cambridge Health Alliance (CHA), working as a Senior Milieu Counselor. (Ex 10.)
  2. The physical skills required to perform the essential duties of this job are:
    - (1) Sufficient mobility to negotiate physical plant. Strength and endurance to perform physically for long periods of time (eight hours), i.e. walking, lifting, bending, twisting, kneeling, standing, reaching, squatting.
    - (2) Physical ability to transfer and lift patients with and without mechanical devices.
    - (3) Physical ability to carry, push or [lift] patient care equipment as needed (i.e. beds, stretchers, chairs, wheelchairs, medication carts, etc.).
    - (4) Physical dexterity and psychomotor skills to respond adequately and appropriately to routine and emergent patient care needs in an acute care setting, within an effective timeframe.
    - (5) Visual and auditory capabilities sufficient to read information and respond to auditory input.
- (Ex. 10.)

3. On March 20, 2020, Mr. Santana suffered a personal injury when he was confronted with a highly aggressive patient, who launched a heavy chair at him. The impact of the chair to his left foot caused the disabling injury. (Testimony Santana, Casey; Ex. 10.)

4. This incident was witnessed by two coworkers, Brian Casey and Julia Bousquet. (Testimony Santana, Casey; Exs. B, C.)

5. Mr. Santana continued to work until August 6, 2020. That was his last day working for CHA. (Testimony Santana; Ex. 3.)

6. Mr. Santana underwent surgery for his foot injury on September 11, 2020: a left fifth toe repair subluxation with extensor tendon lengthening with a skin z-plasty (a surgical technique used to release tightness in a tendon and improve range of motion). (Testimony Santana; Exs. 10, A.)

7. Mr. Santana took medical FMLA leave from September 11, 2020 through December 6, 2020. (Testimony Santana.)

8. On November 18, 2020, Mr. Santana underwent an MRI of the left knee due to “instability of left knee joint.” The MRI revealed medial and lateral meniscal tears, widespread full-thickness chondral loss in the medial compartment, and a popliteal cyst. Following the MRI, Mr. Santana had x-rays completed of both knees. Those showed degenerative changes of the left knee, mostly involving the medial joint compartment and patellofemoral joint and marked narrowing of the medial joint compartments in both knees. (Exs. 10, A.)

9. The Petitioner saw Dr. Jason Freedman on November 23, 2020, for chronic left knee pain. The progress notes state that Mr. Santana “denies any trauma or

inciting incident.” Dr. Freedman’s assessment was severe left knee arthritis. He stated that Mr. Santana’s “x-rays even early in the year confirmed the arthritis.” Dr. Freedman gave him a steroid injection in his left knee. (Ex. A.)

10. On December 1, 2020, Mr. Santana followed up with Dr. Samuel Doppelt. His assessment was that the “patient has bilateral knee arthritis left greater than right radiographically. Currently his right knee is now bothering him significantly.” (Ex. A.)

11. On December 10, 2020, Mr. Santana received steroid injections in both knees from Dr. Doppelt: 40 mg of Depo-Medrol to the left knee and 80 mg of Depo-Medrol to the right knee. (Ex. A.)

12. The Petitioner saw Physician Assistant Tamara Decker and Dr. Samuel Doppelt on January 19, 2021. The progress notes discuss how Mr. Santana’s “arthritis is significantly affecting his activities of daily living. Therefore, he is a candidate for total knee replacement . . . . He is very much interested in scheduling the surgery.” (Ex. A.)

13. Mr. Santana underwent a total left knee replacement on April 9, 2021. Around four months later, on August 11, 2021, Mr. Santana underwent a total right knee replacement. (Testimony Santana.)

14. On December 1, 2021, Mr. Santana completed an application for accidental disability retirement. The medical conditions for which he applied for disability retirement were: “Medial and lateral meniscal tear of the left knee; ligament trauma of the left knee; widespread full-thickness chondral loss in the medial compartment of the left knee; bilateral knee osteoarthritis.” (Ex. 1.)

15. Mr. Santana has been treated by his primary care physician, Dr. Clinton Pong, since August 2017. Dr. Pong prepared a Physician’s Statement on November 30,

2021, opining that Mr. Santana cannot perform any of his physical job duties, could not regularly restrain aggressive and combative patients, nor endure periods of prolonged standing. (Testimony Santana, Ex. 2.)

16. PERAC convened a Regional Medical Panel comprising three orthopedists: Drs. Ryan Friedberg, Wojciech Bulczynski, and Eugene Brady. (Ex. 5.)

17. All three panelists agreed that Mr. Santana was physically incapable of performing his essential job duties and that the incapacity was likely to be permanent. Regarding causation, Dr. Bulczynski answered “yes” to the certificate causation question, while Drs. Friedberg and Brady answered “no.” (Exs. 5, 6.)

18. On January 26, 2022, Mr. Santana was evaluated by Dr. Friedberg. He diagnosed Mr. Santana with bilateral knee arthritis status post bilateral knee arthroplasty. He opined that Mr. Santana was permanently incapable of performing the essential duties of his job. However, concerning causation, he stated:

I do not feel that the incapacity is the natural proximate result of personal injury sustained, or hazard undergone on account of which retirement is claimed. . . . With regard to the left knee, it is my opinion that at the time of this injury he suffered from significant preexisting osteoarthritis of both knees. The fact that he had knee replacement surgery to each knee is due to the arthritis and not due to the chair incident that injured his left foot and his left knee, although I do feel the chair incident caused him to have pain in his left knee and may have caused a meniscal tear to his left knee, I do not feel this hastened the need for knee replacement, as he did not have any injury to his right knee which also was replaced 1 month after the left knee replacement.

Thus, I feel that disability is due to natural progression of the preexisting condition and was not aggravated by the alleged injury sustained or hazard undergone. This is to say that even if he had not injured his left knee and only had knee replacement surgery on the right knee, he would still be unable to perform all the duties of his job. . . . I do feel the major and predominant reason for his retirement is due to the knee replacement

surgery and I do not feel that the injury that occurred in March 2020 hastened the need for knee replacement surgeries.

(Ex. 5.)

10. [JR1] On January 28, 2022, Mr. Santana was evaluated by Dr. Bulczynski, who answered in the affirmative to all three certificate questions of incapacity, permanence and causation. He stated that the injury from March 2020 resulted in a “left foot injury [that required] surgery as well as aggravation of left knee pre-existing osteoarthritis requiring a total knee replacement.” (Ex. 5.)

18. On February 2, 2022, Mr. Santana was evaluated by Dr. Brady. He opined that Mr. Santana was permanently incapable of performing the essential duties of his job. Regarding causation, however, Dr. Brady stated:

Mr. Santana has a long-standing history of osteoarthritis in both knees. This could perhaps be partly due to the fact that he was morbidly obese for a period of time, requiring a gastric bypass, with significant weight loss after that. . . . In my opinion, Mr. Santana’s issues with his left foot were causally related to his work injury. The complaints of his left knee and his need for total knee replacement are not related to his work injury, and they appear more degenerative in nature. His arthritis of the left knee is clearly pre-existing, and it was only temporarily exacerbated by the injury that took place on 3/20/20.

. . . The knee replacement procedure is not related to his work injury, but it was due to a pre-existing condition.

(Ex. 5.)

19. On May 4, 2022, the Board sent a request for clarification to the panelists. All three panelists maintained their opinions on causation, resulting in a negative medical panel. (Exs. 6, 11.)

20. In Dr. Friedberg’s clarification, he stated that “said incapacity is not such as might be the natural and proximate result of the personal injury sustained, or hazard

undergone on account of which retirement is claimed.” Similarly, Dr. Brady stated that “there is no suggestion of a traumatic cause to the natural progression of his osteoarthritis,” and that he “did not feel that the injury was a permanent traumatic injury to the left knee, but rather a pre-existing degenerative arthritis to the left knee.” (Ex. 6.)

21. Next, the Board requested that PERAC replace Dr. Friedberg because, it claimed, he used two different standards of proof in his narrative report: (i) whether his incapacity *might* be the natural and proximate result of the chair injury; and (ii) whether the chair injury was the *major and predominant* cause of his incapacity. (Ex. 12.)

22. On November 23, 2022, PERAC denied the Board’s request, first noting that in his clarification letter, Dr. Friedberg noted:

Again, said incapacity is not such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed,”

and further explaining that Dr. Friedberg

properly answered the question regarding causation and supported that answer in his narrative response. The fact that he commented that the claimed injury was not the major and predominant reason for his retirement is further support for his answer that said incapacity was not such as might be the natural and proximate result of the claimed injury.

(Ex. 12.)

23. Because of the negative medical panel, the Board denied Mr. Santana’s application, notifying him on December 12, 2022. He timely appealed. (Ex. 10.)

### **CONCLUSION AND ORDER**

Mr. Santana appeals the Cambridge Retirement Board’s denial of his application for accidental disability retirement. As discussed below, his appeal must be denied because he has not demonstrated that the medical panel lacked pertinent facts, applied an

erroneous standard, or was plainly wrong. The panel's conclusion was based on a comprehensive review of the relevant medical records, and Mr. Santana has not demonstrated that the panelists' opinions were flawed in a way that warrants overturning the Board's denial.

To qualify for accidental disability retirement, a member must apply to his retirement board and undergo a medical evaluation by a regional medical panel comprising three physicians. G.L. c. 32, §§ 6(3)(a) and 7(1). The application may be approved by the retirement board only if a majority of the medical panel certifies that the applicant is unable to perform his essential job duties, that the incapacity is permanent, and that the incapacity could reasonably result from the personal injury or hazard encountered during employment. *See Malden Ret. Bd. v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973); *Quincy Ret. Bd. v. Contributory Ret. App. Bd.*, 340 Mass. 56, 60 (1959). A "condition precedent" to accidental disability retirement is affirmative answers by a majority of the panel to all three certificate questions. *Fairbairn v. Contributory Ret. App. Bd.*, 54 Mass. App. Ct. 353, 354 (2002). The Board must deny the application if, as happened here, a majority of the panel answers any of the three certificate questions in the negative. *Id.*

The panelists' conclusions are presumed valid and must be upheld unless the applicant can show that a panelist employed an erroneous standard, lacked pertinent facts, failed to follow proper procedures, was improperly comprised, or was "plainly wrong." *See Malden Ret. Bd.*, 1 Mass. App. Ct. at 424; *Kelley*, 341 Mass. at 617. The applicant bears the burden of proving these arguments by a preponderance of the evidence. *See, e.g., Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996).



Mr. Santana has failed to meet this burden. A majority of the panel opined “no” on causation. He has not presented any evidence that would tend to show that the panel employed an erroneous standard, lacked pertinent facts, failed to follow proper procedures, was improperly comprised, or was “plainly wrong.” His only arguments, which address minor issues concerning the medical records and other statutory matters, lack merit. Below, I address each of the points raised in his appeal.

Mr. Santana first claims that Dr. Friedberg made incorrect statements and lacked pertinent information that led to his opinion being “built upon a shaky foundation.” In his narrative report, Dr. Friedberg stated that the Petitioner’s right knee was replaced one month after the left and relied on the fact that it was replaced somewhat contemporaneously. The two surgeries were actually four months apart, and Mr. Santana underwent the second replacement at the recommendation of his surgeon, Dr. Doppelt, who was planning to leave his medical practice. Based on this, Mr. Santana does not believe that Dr. Friedberg had surgical records pertaining to the total right knee replacement. This minor discrepancy does not constitute a significant error likely to mislead Dr. Friedberg or the rest of the medical panel. Dr. Friedberg’s conclusion was that, at the time of the injury, Mr. Santana already suffered from significant preexisting osteoarthritis of both knees and that his disability was due to the natural progression of that pre-existing condition rather than an aggravation of his work injury. Whether the second surgery happened one month or four months after the first one is not likely to impact Dr. Friedberg’s opinion on causation.

The next argument is that Dr. Friedberg erroneously reported that Mr. Santana “did not have any injury to his right knee, which was also replaced,” leading to a plainly

wrong assertion or one based on a lack of pertinent information. Mr. Santana may have suffered injuries to his right knee over the course of his career, as he asserts. However, those injuries, if they occurred, went unreported, and none of them are corroborated by his medical records. Mr. Santana's medical records often mention osteoarthritis found in both knees, however. The only other mention of injury to the right knee is the record from November 6, 2019, when Mr. Santana saw Dr. Pong after being kicked while playing soccer. He was unable to bear weight right after the kick, but the pain was improving, and he was able to walk. Mr. Santana has not demonstrated other injuries to the right knee that would be pertinent to Dr. Friedberg's consideration of causation.

Additionally, Mr. Santana claims that Dr. Friedberg ignored the Physician Statement submitted by Dr. Pong. The medical panel is presumed to have considered all pertinent information presented. *Easton v. Middlesex Cnty. Ret. Sys.*, CR-21-0566 (Div. Admin. Law. App. Feb. 7, 2025). There is no evidence that Dr. Friedberg ignored the Physician Statement simply because he reached a different conclusion, as "the fact that another physician offered a contrary opinion is not evidence of the use of an erroneous standard." *Hickney v. State Bd. of Ret.*, CR-07-511, at \*7 (Div. Admin. Law. App. Mar. 19, 2009). A medical panel is not prohibited from disagreeing with other medical opinions reflected in the record. *Giammalvo v. Massachusetts' Teachers' Ret. Sys.*, CR-12-195 (Div. Admin. Law. App. June 19, 2015); *Daniele v. Worcester Reg'l Ret. Sys.*, CR-23-0003 (Div. Admin. Law. App. Nov. 1, 2024).

Finally, Mr. Santana insists that Drs. Friedberg and Brady offered "unqualified" negative opinions as to causation, resulting in an application of the wrong standard, lacking pertinent information, and/or being plainly wrong. He claims these opinions fail

to consider whether the Petitioner's incapacity "might be" the natural and proximate result of the injury sustained. Both doctors opined that the injury to Mr. Santana's knees was not causally related to his work injury. In Dr. Friedberg's clarification, he stated that "said incapacity is not such as might be the natural and proximate result of the personal injury sustained, or hazard undergone on account of which retirement is claimed."

Similarly, Dr. Brady stated that "there is no suggestion of a traumatic cause to the natural progression of his osteoarthritis," and that he "did not feel that the injury was a permanent traumatic injury to the left knee, but rather a pre-existing degenerative arthritis to the left knee." The panel physicians need not use particular language in expressing their opinions as long as a fair reading of their reports shows they employed the proper causation standard. *Frongillo v. Contributory Ret. App. Bd.*, 61 Mass. App. Ct. 1124, at \*3 (2004) (Mass. App. Ct. Rule 1:28) ("In the present case, the panel expressly concluded that the plaintiff's incapacity was not one which might be the natural and proximate result of his on-the-job injuries. As we have indicated, that conclusion was permissible. That the panel reached it in part by concluding that the disability was in fact caused by something else (i.e., a degenerative condition) supports, rather than vitiates, the finding that no causal nexus was possible."). Here, Drs. Friedberg and Brady more than adequately explained their opinions that there is no medical possibility that Mr. Santana's incapacity is work-related. *Malden Ret. Bd.*, 1 Mass App. Ct. at 424.

For the reasons stated above, Mr. Santana's appeal fails. He has failed to prove that the medical panel's decision was based on an erroneous standard, lacked pertinent facts, failed to follow proper procedures, was improperly comprised, or was "plainly

wrong.” The Board’s denial of his application for accidental disability retirement is therefore AFFIRMED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*/s/ Kenneth J. Forton*

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Kenneth J. Forton  
Administrative Magistrate

DATED: April 25, 2025