

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

Paul Sardagnola,
Petitioner

v.

Docket No. CR-19-0564

State Board of Retirement,
Respondent

Appearance for Petitioner:
James K. Meehan, Esq.

Appearance for Respondent:
Yande Lombe, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The Petitioner appeals the decision of the State Board of Retirement denying his application for accidental disability retirement. The decision is affirmed. A majority of the medical panel opined that the Petitioner’s disabling condition was not such as might be the natural and proximate result of the personal injury on which he claims retirement. The Petitioner’s critiques of the majority panel report are unavailing and do not establish that it was “plainly wrong.”

DECISION

The Petitioner, Paul Sardagnola, appeals the decision of the State Board of Retirement (“the Board”) to deny his application for accidental disability retirement.

On June 21, 2023, I conducted an in-person hearing at the offices of the Division of Administrative Law Appeals (“DALA”), in Malden, Massachusetts. Agreed-upon Exhibits 1-13 were admitted into evidence. Mr. Sardagnola was the sole witness.

The parties submitted post-hearing briefs, whereupon the record was closed.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. In June 1989, Mr. Sardagnola began working at the Upper Blackstone Water Pollution Abatement District (“Upper Blackstone”), a wastewater treatment facility, as an attendant. His responsibilities included removing ash from the incinerators, checking pumps, taking deliveries, and serving as an extra pair of hands as needed. (Testimony; Exhibit 3).
2. Prior to his start at Upper Blackstone, he did not have any issues or problems with his back. He passed a pre-employment physical and was cleared to work without any restrictions. (Testimony)
3. Approximately one year later, Mr. Sardagnola became an operator. His duties included removing rock-like debris and other combustion byproducts from the incinerator using a long rake-like tool. He was also responsible for draining large tanks and cleaning them. Draining the tanks required him to climb into the tanks with a heavy portable sump pump. Cleaning the tanks required him to climb into them with long coiled hoses that weigh about seventy pounds when dry and much more when fully charged with water. (Testimony).
4. Mr. Sardagnola cleaned up chemical spills. He also shoveled snow and carried heavy barrels of rock salt. (Testimony).
5. In 1991 or 1992, Mr. Sardagnola was standing on top of a tank that had a pipe clogged with waste consisting of a mixture of substances such as gasoline,

cooking grease, and oil. Without forewarning, a colleague sent a blast of compressed air to clear this waste, resulting in a blast of waste flying into Mr. Sardagnola's face, blinding him temporarily. Mr. Sardagnola fell onto a platform beneath him and hit his back on an electrical box. (Testimony).

6. Mr. Sardagnola was transported to the emergency room. When Mr. Sardagnola asked the emergency room doctor what he should do about his back, the doctor told him "Take ibuprofen or Advil. You're young. You'll be fine." (Testimony).
7. Mr. Sardagnola reported to work the following day. He took Tylenol or Advil for a few days. Following this incident, he experienced several episodes of low back pain every year that would typically resolve within a few days. (Testimony; Exhibit 9).
8. On October 15, 2005, Mr. Sardagnola was injured at work when he was closing a gate. Turning the handle required him to twist his body. As he strained to turn the handle, he felt a jolt of pain in his back. (Testimony; Exhibit 5, 6)
9. As a result of this injury, Mr. Sardagnola was out of work for approximately two weeks and received worker's compensation benefits. (Testimony; Exhibit 9).
10. When he returned to work, he was placed on light duty status. Although he was placed on light duty status, his duties included filling up 55-gallon barrels of ash from the incinerator and moving them with a wheelbarrow, by himself. (Testimony).
11. On February 5, 2006, an MRI of Mr. Sardagnola's lower back showed a foraminal disc protrusion at L4-5 that touched the exiting L4 nerve root on the left. (Exhibit 9).

12. Mr. Sardagnola experienced worsening back pain in March 2006. The record does not indicate a particular incident or event that caused this worsening. Mr. Sardagnola went out of work again on March 11, 2006. (Testimony; Exhibit 9).
13. From March 11, 2006 through August 1, 2006, Mr. Sardagnola was out of work and received worker's compensation benefits. (Exhibit 9).
14. On March 15, 2006, Mr. Sardagnola treated with Dr. Gary Peters, an orthopedic surgeon, who noted that Mr. Sardagnola was "doing quite well until ten days ago when he had a severe recurrence of low back pain ... he does not recall any recent injury to his back, but he feels quite sure that these symptoms are a recurrence of his back pain dating back to his injury in October." (Exhibit 9).
15. On April 4, 2006, Dr. William O'Connor, a treating physician, examined Mr. Sardagnola and reviewed the February 5, 2006 MRI. Dr. O'Connor stated that Mr. Sardagnola "has only one disc that is reasonably good." He stated that Mr. Sardagnola has a "predisposition for accelerated disc problems, but he has by history a significant work-related injury" and that "this is a work-related injury problem." (Exhibit 9).
16. In mid-to-late 2009, Mr. Sardagnola treated with Dr. Mark Kaplan for pain management. Dr. Kaplan performed a variety of injections, including medial branch blocks and epidural steroid injections. (Exhibit 9).
17. In 2014, Mr. Sardagnola became a senior operator, which is a supervisory position. Because of staffing issues and the need for the continuous operation of Upper Blackstone, Mr. Sardagnola frequently worked overtime, often six days a week and sometimes as many as twelve straight days. (Testimony).

18. Because he worked the 4 pm – midnight shift and had a skeleton crew, he was routinely required to step in and perform the work tasks expected of an operator in addition to directing the activities of subordinates. (Testimony).
19. In the operator and senior operator positions, Mr. Sardagnola often had to react swiftly to quickly changing circumstances. (Testimony).
20. On different dates in the summer of 2016, Mr. Sardagnola treated at Millbury Internal Medicine, complaining of neck and shoulder pain. (Exhibit 9).
21. Over the summer of 2016, Mr. Sardagnola's back pain worsened. He also started to develop pain in his left leg. (Testimony).
22. On August 20, 2016, an MRI of Mr. Sardagnola's lumbar spine was performed.

The impressions from this MRI include the following:

Compared to a February 2006 lumbar MRI, there is progressive lumbar levoscoliosis.

Progressive disc and facet degenerative changes results in increasing mild-moderate central narrowing, most prominent at L4-L5.

There is progressive foraminal narrowing, most prominent asymmetric to left at L4-L5 with mild mass effect on the exiting L4 nerve root.

(Exhibit 9).

23. In late September 2016, Mr. Sardagnola told his supervisor, the plant manager, that his pain was intense and that it was becoming difficult to walk. The plant manager observed that one senior operator was out sick and the other was on vacation. He asked Mr. Sardagnola if he could hang on another week. Mr. Sardagnola told him that he would do the best he could. He was able to continue working for another three or four days. (Testimony).
24. There was no specific, precipitating incident in September 2016 that caused Mr.

Sardagnola's increased pain. (Testimony).

25. Mr. Sardagnola last performed his job duties on September 27, 2016.

(Testimony).

26. On December 15, 2016, Dr. David Heller examined Mr. Sardagnola at the request of Mr. Sardagnola's attorney. Dr. Heller diagnosed Mr. Sardagnola with "lumbar disc protrusion at L4-5 affecting the left L4 nerve root" and "low back pain with lumbar radiculopathy." Dr. Heller opined:

The accident of October 15, 2005, and the continued aggravations of his work over the next decade, are both in my opinion and to a reasonable degree of medical certainty, major causes of the diagnoses, the ongoing symptoms, the disability, and the need for treatment. His continued work in a strenuous environment over the 10 years following the 2005 incident must be considered a significant aggravating factor of his prior work related condition.

(Exhibit 9).

27. On February 15, 2017, Dr. Mitchell Hardenbrook performed a laminectomy on Mr. Sardagnola's lower spine. (Exhibit 9).

28. Mr. Sardagnola continued to have lower back discomfort. (Exhibit 9).

29. At some point, Dr. Hardenbrook performed surgery on Mr. Sardagnola's neck as well. (Testimony).

30. On September 17, 2017, Mr. Sardagnola applied to retire for accidental disability retirement. (Exhibit 3).

31. On his application, Mr. Sardagnola checked a box to indicate that his incapacity was caused by a "personal injury," not a "hazard." (Exhibit 3). He identified his injuries as having occurred on October 15, 2005 ("[C]losing sluice gates during we[t] weather event. Severe low back pain.") and September 29, 2006 ("[S]evere

low back pain into left leg developed as I was doing my normal heavy work activities.”) (Exhibit 3)

32. His application was supported by a treating physician statement by Dr. Hardenbrook, who diagnosed Mr. Sardagnola with “spinal stenosis lumbar sacral region [and] spinal stenosis lumbar.” (Exhibit 4).
33. On August 15, 2018, Dr. Hardenbrook performed another procedure on Mr. Sardagnola’s lower back, a foraminotomy. (Exhibit 9).
34. In May 2019, Mr. Sardagnola was examined by three separate Regional Medical Panel physicians. All three panelists opined that Mr. Sardagnola was physically incapable of performing his work duties and that such disability was likely to be permanent. (Exhibit 8).
35. Dr. Goss and Dr. Linson opined that Mr. Sardagnola’s incapacity was “not such that might be the natural or proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.” Dr. Goldberg reached a contrary conclusion, opining that the incapacity was “such that might be the natural or proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.” (Exhibit 8).
36. On November 22, 2019, the Board voted to deny Mr. Sardagnola’s application for accidental disability benefits on the ground that a majority of the medical panel did not support the application. (Exhibit 1).
37. On November 26, 2019, Mr. Sardagnola filed an appeal to DALA. (Exhibit 2).
38. In a letter dated December 2, 2019, Mr. Sardagnola objected to the findings of the medical panel and asked that Dr. Goss and Dr. Linson be replaced. Mr.

Sardagnola's objections in this letter are substantially the same as those levied in this appeal. (Exhibit 10).

39. On January 15, 2020, the Board asked the Public Employees' Retirement Administration Commission to appoint two new physicians to examine Mr. Sardagnola. The Board did not provide a substantive rationale for this request and instead attached Mr. Sardagnola's December 2, 2019 letter. (Exhibit 12).
40. By letter dated April 14, 2020, PERAC denied the request, stating that "[b]ased upon our review of the available information, all of the appointed physicians[] provided a detailed and comprehensive documentation of the records reviewed[, a] description of the applicant's medical history, and an understandable and reasoned explanation of their findings upon examination." (Exhibit 13).

CONCLUSION AND ORDER

An applicant for accidental disability retirement must establish (1) "that he is unable to perform the essential duties of his job"; (2) that the incapacity "is likely to be permanent"; and (3) that the incapacity arose "by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [the member's] duties." G.L. c. 32, § 7(1). In this appeal, there is no dispute that Mr. Sardagnola is unable to perform the essential duties of his job and that this incapacity is likely to be permanent. Instead, this appeal concerns Mr. Sardagnola's criticisms of the causation opinions rendered by Dr. Goss and Dr. Linson, which Mr. Sardagnola argues are "flawed" and "erroneous." (Petitioner Post-Hearing Brief, at 2-3).

"A condition precedent for awarding accidental disability" is that "[a] majority of the panel must conclude the applicant is permanently unable to perform his essential job duties and that there is a medical possibility of a causal relationship between the disability and a personal

injury or hazard undergone while performing his duties.” *Brady v. Weymouth Ret. Bd.*, CR-20-0201, *10 (DALA Jul. 15, 2022) (citing *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996)). “A negative panel report generally precludes an applicant from receiving accidental or involuntary disability retirement benefits.” *Chiasson v. Worcester Ret. Bd.*, CR-17-867, 2021 WL 9697044, at *6 (DALA Dec. 10, 2021) (citing *Quincy Ret. Bd. v. Contributory Ret. App. Bd.*, 340 Mass. 56, 60 (1959)).

Nevertheless, the “general rule that a negative panel ends an application for accidental or involuntary disability retirement benefits has a few exceptions: if the medical panel did not ‘conform[] to the required procedure of physical examination’; it lacked ‘all the pertinent facts’; it used an erroneous legal standard; or the medical certificate was ‘plainly wrong.’” *Beauregard v. Fall River Ret. Bd.*, CR-18-0498, at *4 (DALA Mar. 11, 2022) (citing *Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 617 (1961)).

I construe Mr. Sardagnola’s argument on appeal to be that the majority’s certificate vis-à-vis causation is “plainly wrong.” A claim that a medical panel certificate is “plainly wrong” is not an opportunity to retry the medical facts. *Kelley, supra*, at 617.

Mr. Sardagnola first takes issue with Dr. Goss’s statement that he had sustained a “relatively minor soft tissue injury” in September 2016 and that “since such injuries heal fairly reliably in 4-6 weeks,” he was unable to relate “Mr. Sardagnola’s subsequent lumbosacral difficulties after 2016 to this event.” Mr. Sardagnola asserts that “Dr. Goss has no evidentiary or factual basis to state that this condition resolved within 4-6 weeks,” and that, on the contrary, it’s “clear from the medical evidence that the petitioner’s medical condition never resolved.” (Post-Hearing Brief, at 2).

This critique is unavailing. Mr. Sardagnola appears to conflate the worsening of his condition in September 2016 with his broader lumbosacral issues. Dr. Goss explained that, in his opinion, those are two different conditions “in the face of MRI evidence (08/20/2016 --- one month prior to the event) of significant preexisting progressive multi-level (L1-L2 through L5-S1) degenerative disease involving that area.” (Exhibit 8). Dr. Goss opined that the soft tissue injuries would have been expected to heal in a matter of weeks. He acknowledged that the issues with Mr. Sardagnola’s lumbar spine, on the other hand, persisted and were likely to be permanent.

Mr. Sardagnola’s next critique of Dr. Goss’s opinion also misses the mark. He states that Dr. Goss ignores “Mr. Sardagnola’s history of at least three low back injuries, two of which resulted in significant lost time.” (*Id.*). I assume Mr. Sardagnola is referring to the injuries in 1991/1992 (which did not result in lost time), October 2005 (resulting in lost time), and March 2006 (resulting in lost time). Dr. Goss did not ignore any of these. They are referenced in his opinion.

Perhaps what Mr. Sardagnola intends to convey is that Dr. Goss did not expressly address how these injuries might affect his causation analysis. If so, the argument is not meritorious. The fact that medical panelists may choose to “concentrate in their reports on explanations in support of their ultimate opinions” and not discuss other evidence, or even contrary evidence, does not, standing alone, constitute a “legally fatal flaw.” *McCarthy v. Contributory Ret. App. Bd.*, 16 Mass. L. Rptr. 353, 2003 WL 21500543, at *5 (Mass. Super. Ct. April 22, 2016). To put it another way, “medical panels would be encumbered beyond feasibility if they were required to engage in written refutation of every record brought to their attention. A datapoint’s absence from a panel’s written report typically signifies only that the panel did not ascribe material

importance to that datapoint --- not that the panel betrayed its duty to ‘review’ everything pertinent.” *Kiely v. State Bd. of Ret.*, CR-18-496, at *5 (DALA Oct. 15, 2021) (citations omitted).

Here, Mr. Sardagnola does not explain why the failure to expressly analyze the prior injuries was a mistake, let alone that this omission was so serious that it made Dr. Goss’s opinion “plainly wrong.”

Turning to Dr. Linson’s opinion, Mr. Sardagnola takes issue with the italicized portion of the following passage:

The information and documentation available to me, it is my opinion with a reasonable degree of medical certainty that Mr. Sardagnola developed symptomatic lumbar degenerative change and stenosis and found that he was no longer suitable for the full and normal duties of a water waste treatment plant worker due to the heavy requirements. I do not find this to be a work injury. *This is the same as with his neck where he is not claiming a work injury. In other words, the cervical problems are the natural degenerative processes that occur in some individuals, and if there are any work aggravations they would be expected to be transient and time limited. Therefore, I do not find that there is a work-related causality between Mr. Sardagnola’s back and leg problems (nor his neck and arms) and any work events. I find that the natural progression and inherent nature of his spine has made him not suitable for his continued job.*

(Exhibit 8 (italics supplied)).

Mr. Sardagnola states that Dr. Linson erred by “equat[ing] the lumbar condition to the cervical condition which has never been affected by a work injury.” If I understand Mr. Sardagnola’s argument, he is contending that Dr. Linson compared Mr. Sardagnola’s lumbar spine condition with his cervical spine condition and, on the basis of that comparison, erroneously concluded that the lumbar spine, like the cervical spine, suffers from a natural degenerative condition.

The argument is unavailing. The physical examination and medical record review documented in Dr. Linson’s opinion is focused on Mr. Sardagnola’s lumbar spine condition.

Only after concluding that he does “not find this to be a work injury” did Dr. Linson draw a comparison between Mr. Sardagnola’s lumbar spine condition and his cervical spine condition.¹

Mr. Sardagnola also asserts that Dr. Linson ignored his three prior back injuries. For the reasons already stated with respect to Dr. Goss, this argument is not meritorious.²

For the foregoing reasons, the decision of the State Board of Retirement is AFFIRMED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS,

/s/ Timothy M. Pomarole

Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: September 13, 2024

¹ It is possible that Mr. Sardagnola is saying nothing more than that the comparison is inapt because there is a documented history of injuries to the lower back, but no such record with respect to the neck. Even assuming for the sake of argument that the comparison is flawed, Mr. Sardagnola would still need to explain why or how it renders Dr. Linson’s negative causation opinion “plainly wrong.”

² There is one difference between the two opinions worth noting. Dr. Linson’s opinion references the October 2005 work injury, but (unlike the recitation in Dr. Goss’s opinion) does not expressly discuss the worsening of Mr. Sardagnola’s condition that caused him to take time off work a few months later in March 2006. Dr. Linson says the 2005 injury caused Mr. Sardagnola to be out of work for five months. Since the October 2005 injury resulted in only two weeks out of work and was followed by another four and one-half months starting in March 2006, it is evident that Dr. Linson is treating Mr. Sardagnola’s worsening condition in March 2006 as a continuation of the October 2005 injury. I cannot say that this approach is mistaken, let alone “plainly wrong.”