

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF ADMINISTRATIVE LAW APPEALS

Middlesex, ss.

**Christopher Serra,**  
Petitioner,

Docket No.: CR-24-0144

v.

Date: August 29, 2025

**Massport Employees' Retirement Board,**  
Respondent.

**Appearances:**

For Petitioner: Robert Noa, Esq.

For Respondent: Richard Heidlage, Esq.

**Administrative Magistrate:**

Eric Tennen

**SUMMARY OF DECISION**

The Petitioner had a history of work-related injuries to his shoulders. In 2020, he was in another workplace accident that aggravated his pre-existing shoulder injuries and also injured his bicep. Although subsequent surgery helped alleviate his bicep pain, his shoulder pain persisted and made it so he could no longer perform his job duties. Because the accident aggravated a preexisting condition to the point of disability, his application for accidental disability retirement should have been allowed.

**INTRODUCTION**

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Massachusetts Port Authority Employees' Retirement Board's ("Board") decision denying his application for accidental disability retirement. The parties filed a joint pre-hearing memorandum with a series of agreed facts. I held an in-person hearing on May 15, 2025. The Petitioner was the only

witness. I entered exhibits 1-14 into evidence. Both parties submitted post-hearing briefs on July 11, 2025 at which point I closed the administrative record.

### **FINDINGS OF FACT**

1. The Petitioner was an HVAC mechanic for the Massachusetts Port Authority ("Massport"). Before that, he was an HVAC mechanic for the Department of Transportation ("DOT"). (Agreed facts).
2. His disability retirement application revolves around numerous injuries to his shoulders. Over the years, he hurt each shoulder repeatedly and had various surgeries in response. (Testimony.)

#### Pre-Massport injuries, treatments and surgeries

3. The Petitioner had a series of injuries to his shoulders while working at DOT between 2011 and 2016. (Agreed facts; ex. 4, pgs. 222-224, 226, 238 & 264.)
4. Even after treatment, he continued to have persistent shoulder pain. In June 2016, the Petitioner reported to his doctor that he did not feel he could work in his current capacity and had pain that limited his activities of daily living. He was specifically worried about his position at DOT because he was always required to work alone, which he felt was unsafe. Also, the job required intense physical labor that was generally trying and specifically problematic given the Petitioner's various shoulder problems. (Ex. 4, pgs. 222-224; testimony.)

#### Massport duties

5. Given his concerns at DOT, the Petitioner was happy to find a new job at Massport. He

joined Massport in August 2016. (Testimony; ex. 3.)

6. While this job was physically demanding, it was not as physically strenuous or unsafe as his job with DOT. For one, he did not have to work alone. Also, the things he had to lift, push, or pull were not as heavy or difficult to do as at his prior job. (Testimony.)
7. It also appears cortisone treatment, and perhaps time, were effective in helping him stabilize his shoulder problems. From the time of he began at Massport, August 2016, through July 2017, he was able to perform all aspects of his job without limitations or restrictions. He experienced the typical minor aches that come with any physically demanding job, but nothing he could not manage and nothing that stressed his shoulder. (Testimony.)

#### Massport Injuries

8. On July 26, 2017, the Petitioner hurt his left shoulder while changing air filters. In the immediate aftermath, he was able to continue working without restrictions. But by December 2017, he experienced worsening pain. He decided to proceed with surgery to alleviate his symptoms. (Ex. 4, pg. 208-209 & 11.)
9. However, before he could have that surgery, on January 19, 2018, he fell while closing a valve. He landed on his right side. He lacerated his elbow and was treated for that immediately at the ER. (Ex 4, pgs. 200-207.)
10. He was not immediately treated for anything else. As the days progressed, he began to feel more and more pain in his right shoulder. (Testimony.)
11. Despite this development, in February 2018, he had surgery to treat the aftermath of his 2017 injury and his ongoing left shoulder pain. (Ex. 4, pg. 199.)

12. Following the surgery, he was restricted from lifting more than five pounds overhead and 15 pounds to his shoulder height and below. (Ex. 4, pg. 196.)
13. While rehabbing his left shoulder, the pain in his right shoulder intensified. In April 2018, he received another cortisone injection. (Ex 4., p. 198.)
14. He was eventually returned to full duty on June 25, 2018. (Ex. 4, pg. 193.)
15. Yet, around July 16, 2018, he began to have increased left shoulder pain, again. He told the doctor he was “unsure how he can continue with this profession.” He took a two-week leave for his left shoulder injury. (Ex. 4, pg. 193.)
16. By January 2019, his right shoulder was again causing him tremendous pain; it was “killing” him. He had trouble sleeping and did not feel safe at work. (Testimony)
17. At this point, he stopped working again. He had a right shoulder MRI in January 2019 which, when compared to an MRI from 2016, showed a possible new tear. He engaged in physical therapy and had work restrictions, this time limited to lifting 10 pounds. (Ex 4, pg. 186.)
18. He remained out of work until he was finally able to have surgery on his right shoulder in October 2019. (Ex. 4, pg. 178.)
19. By May 2020, he was able to return to work without restrictions. At that point, he was performing his job well. (Testimony; ex. 4, pg. 166.)

July 2020 accident

20. Unfortunately, on July 15, 2020, the Petitioner again hurt himself while working. He was lifting more heavy objects when he felt “something.” That night, his right shoulder was “on fire” with pain. (Exs. 4, pg. 158 & 11.)

21. He worked two more days to finish out the week, and then never returned to work.  
(Testimony.)
22. Ultimately, this accident caused two main problems. It eventually led to a diagnosis of a “failed proximal biceps tenodesis.” But also, it aggravated his already problematic shoulder issues primarily to his right side. (Exs. 4 & 5; testimony.)
23. Indeed, following the accident, he repeatedly reported, and was seen for, shoulder pain. This included difficulty lifting and doing other activities. (Ex. 4, pgs. 134-163.)
24. Through workers compensation, he was ultimately approved for surgery, which he had, on January 28, 2021. The surgery was two-fold, targeting both his bicep and shoulder. (Exs. 4, pgs. 134-138 & 5.)
25. While the surgery went well, and there was hope that it could lead to a full recovery, the Petitioner’s progress eventually plateaued. His doctors believed he had about as good as a clinic result as he could have hoped for. Yet, by February 2022, his doctor noted he was unable to return to work. (Exs. 4 & 5.)

Application of accidental disability retirement

26. On January 14, 2021, two weeks before he had his surgery, the Petitioner applied for accidentally disability retirement. His conditions included “right & left shoulder injuries at work.” He specifically listed three dates of injuries: July 26, 2017, January 19, 2018, and July 15, 2020. He was last able to work on July 15, 2020. (Ex. 1.)
27. Dr. Todd O’Brien, an orthopedist, filled out the physician’s statement. He listed July 15, 2020 as the date of injury, and diagnosed the Petitioner with a “recurrent right rotator cuff tear in the setting of prior surgery” and “left shoulder permanent disability.” (Ex. 2.)

28. The Employer's statement listed two dates of injuries: July 26, 2017 and July 15, 2020. It noted that the position could not be accommodated. (Ex. 3.)
29. In May 2022, the Petitioner was evaluated by three orthopedic doctors: Drs. Eugene Brady, Samuel Doppelt, and Wojciech Bulczynski. All three agreed that he was permanently incapacitated and his incapacity might have been proximately caused by a workplace injury. (Ex. 5.)
30. Dr. Brady was aware of the Petitioner's various injuries and surgeries; he wrote about them extensively in his very detailed report. He concluded that the Petitioner's "disability is causally related to the injury he sustained while at work on 7/15/20. Mr. Serra's complaints in his right shoulder also reflect back on his prior work-related injuries and subsequent surgery, which were aggravated by the injury that took place on 7/15/20." (Ex. 5.)
31. Dr. Doppelt also submitted a very detailed report that thoroughly summarized the Petitioner's medical history. His conclusion was similar to Dr. Brady's:
- Mr. Serra's disability is causally related to the final injury he sustained to his right shoulder on 7/15/20, which also aggravated his previous injuries and surgical procedures performed in the right shoulder. It also caused an aggravation of pre-existing issues in the left shoulder, in which he has previously sustained multiple work-related injuries and underwent multiple procedures as well.
- (Ex. 5.)
32. Finally, Dr. Bulczynski's report, while not as detailed, nevertheless includes an acknowledgement of the Petitioner's various prior injuries and surgeries. Dr. Bulczynski specifically noted the disabling injury was on the right shoulder. The disability "is causally related to the work injury of 7/15/20 which significantly aggravated his pre-

existing condition from an injury in 2018.” (Ex. 5.)

33. The Board hired its own doctor to conduct a review, Dr. Vivek Shah. Dr. Shah provided a report even though he did not interview or physically evaluate the Petitioner. While Dr. Shah agreed the Petitioner was permanently incapacitated, he opined “that the preexisting conditions of his shoulders that predated the injury in question on July 15, 2020, are the major cause of his inability to perform the duties of an HVAC technician. In my opinion, the injury he sustained on July 15, 2020 is not a significant contributing cause to his disability.” (Ex. 6.)<sup>1</sup>
34. Ultimately, the Board denied the Petitioner’s application because it found he “did not meet his burden of proving that his disability was proximately caused by one or more of the incidents claimed.” (Ex. 9.)

### DISCUSSION

The Petitioner has the burden of proving every element of his 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,’

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<sup>1</sup> Dr. Shah testified at a hearing before the Board. The parties submitted a recording supposedly of that hearing. (Ex. 12.) But after listening to the recording, it is not of Dr. Shah’s testimony; it is from a subsequent date when the parties were presenting closing arguments to the Board.

In their closing briefs, each side quotes parts of Dr. Shah’s testimony that they say help its case. I trust the parties are accurately representing Dr. Shah’s testimony in their pleadings and thus the fact I do not have the recording is not important. Even taking the quotes at face value, they do not make a difference because I do not credit Dr. Shah’s opinion for the reasons stated below in the discussion.

2) that [their] 'incapacity is likely to be permanent,' and 3) that [their] 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).

A Petitioner whose claim rests on workplace injury 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 work-related injury must be the "natural and proximate cause" of the disability. *Campbell v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 1018, 1018-19 (1984). "Aggravation of a pre-existing condition to the point of disability satisfies the natural and proximate requirement." *Williams v. Pittsfield Ret. Bd.*, CR-15-461, 2023 WL 11806182 (Contributory Ret. App. Bd. Apr. 21, 2023), citing *Baruffaldi v. Contributory Ret. App. Bd.*, 337 Mass. 495 (1958).

The Board first argues that it is not even clear the Petitioner is disabled, i.e. unable to perform his work duties. It relies on Dr. Shah who did not evaluate the Petitioner himself. However, the medical panelists as well as the Petitioner's doctor unanimously opined that he is disabled. Their conclusions are consistent with the evidence, which include the Petitioner's job duties, medical records and testimony. Thus, there is every reason to credit the doctors who examined him over the Board's doctor who did not. *See Budness v. State Bd. of Ret.*, CR-23-0488, 2025 WL 1191222 (Div. Admin. Law App. Apr. 18, 2025).

The Board's next argument is based on a view of the facts with which I disagree. It argues that the only problem the Petitioner had after his 2020 injury was his bicep. Subsequent surgery "fixed" that problem leaving no further fallout from that injury. Therefore, if he was



able to perform his duties before the accident, he should still be able to perform his duties after. On the other hand, if he is unable to work, then it must be because of something other than the effects of the 2020 accident. The Board appears to be advancing the arguments in Dr. Shah's opinion.

The problem with both the Board's argument, and Dr. Shah's opinion, is that it wrongly characterizes the extent of the 2020 injury. True, the 2020 injury did injure the Petitioner's bicep, and the surgery seems to have repaired that almost completely. But while the accident injured his bicep, it also aggravated his pre-existing shoulder injuries. In the months between his accident and surgery, he repeatedly saw his doctor complaining of shoulder pain and difficulty performing various physical tasks. His inability to work was directly related to those problems and did not disappear when his bicep was repaired. That is, the surgery did not return him to where he was prior to the accident because the accident also affected his shoulders, which the surgery did not fix. The Board, and Dr. Shah, ignore and/or fail to acknowledge the accident's impact on the Petitioner's shoulders.

In contrast, the Petitioner's doctors and medical panelists all acknowledge this. First was Dr. O'Brien, who wrote his physician's statement for the Petitioner's application in November 2020—after the accident but before the surgery. His opinion that the Petitioner was disabled had nothing to do with his bicep. Rather, the disability pertained solely to his shoulders, and Dr. O'Brien cited the 2020 incident as the cause of the incapacity.

More importantly, the three medical panelists had the benefit of evaluating the Petitioner after his surgery. They were all aware that the 2020 accident damaged the Petitioner's bicep and his subsequent surgery treated that. But they all very clearly opined that

the 2020 accident simultaneously aggravated his shoulder problems, which did not disappear with the surgery, and that was the basis for their opinions. His inability to perform his job duties related to his inability to lift and reach overhead, which is a problem associated with shoulders, not biceps. Since he was able to do those things at work before, but not after, the accident, the accident must have been the cause of his disability. *See Carreiro v. New Bedford Ret. Bd.*, CR-21-0355, 2023 WL 4846320 (Div. Admin. Law App. Jul. 21, 2023) (“When an employee is perfectly capable of doing their job, and then totally unable to following a workplace injury, this goes a long way toward meeting their burden of proving causation.” ). Again, their views are consistent with the evidence, which include the Petitioner’s job duties, medical records and testimony.

### **CONCLUSION**

The Board’s decision denying the Petitioner’s application for accidental disability retirement is **reversed**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Eric Tennen*

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Eric Tennen  
Administrative Magistrate