

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Richard Shailor,**  
Petitioner,

No. CR-21-0343

Dated: August 16, 2024

v.

**Bristol County Retirement Board,**  
Respondent.

**Appearances:**

For Petitioner: Alan H. Shapiro, Esq.

For Respondent: Linda Champion, Esq.

**Administrative Magistrate:**

Yakov Malkiel

**SUMMARY OF DECISION**

The petitioner is a police officer. A preemployment physical exam revealed a non-disqualifying abnormality of his aortic valve. After decades of service, the petitioner became disabled with hypertension. A medical panel certified that he is entitled to retire for accidental disability under the heart law, G.L. c. 32, § 94. The panel was correct. A preemployment exam makes the heart law unavailable only if it disclosed some evidence of the same condition that ultimately disabled the member.

**DECISION**

Petitioner Richard Shailor appeals from a decision of the Bristol County Retirement Board denying his application to retire for accidental disability. The appeal was submitted on the papers. I admit into evidence exhibits marked 1-15 and stipulations numbered 1-12.

**Findings of Fact**

I find the following facts.

1. Mr. Shailor is a police officer. He began working part time in Rowley in 1992, full time in Rowley in 1997, and full time in Rehoboth later that same year. (Stipulation 1; exhibits 3-5.)

2. Mr. Shailor underwent pre-employment medical screenings in September 1995 and in April 1997. Both screenings found him fit to serve as a police officer. Neither one disclosed any evidence of heart disease or hypertension. (Stipulations 2-3; exhibit 6.)

3. Mr. Shailor attended another medical examination in February 1998, while he was training in the police academy. He was there found to have an “aortic regurgitation” related to a congenital “bicuspid aortic valve.” The exam did not disqualify Mr. Shailor from joining the Rehoboth force. (Stipulation 4; exhibit 7.)

4. Mr. Shailor proceeded to serve on that force for more than twenty years. His duties and working hours were stressful. At some point, he began to be treated for hypertension. (Stipulation 4; exhibits 3-5, 11-14.)

5. On September 17, 2020, after a difficult meeting with his police chief, Mr. Shailor began to suffer from heart palpitations, lightheadedness, and sweating. His colleagues measured his blood pressure, which was worryingly high. He was taken by ambulance to the Sturdy Memorial Hospital and remained there for two days. (Stipulations 5-6; exhibits 11-14.)

6. Mr. Shailor has not returned to work since. In subsequent medical visits, his doctors have diagnosed him with heart disease and severe hypertension. They have struggled to control his hypertension without triggering unmanageable side effects. (Stipulation 7; exhibits 11-14.)

7. In December 2020, Mr. Shailor applied to retire for either accidental or ordinary disability. His application relied on the heart law, G.L. c. 32, § 94. A regional medical panel was convened to assess the application. The panel consisted of Dr. Michael Johnstone (cardiology), Dr. Steven G. McCloy (occupational medicine), and Dr. Howard Honig

(cardiology). The panelists conducted separate examinations in June-July 2021. (Stipulation 8; exhibits 3-5, 11-13.)

8. All three panelists certified that Mr. Shailor is permanently disabled. They viewed hypertension as the disabling diagnosis. The panelists also agreed that, based on the heart law, Mr. Shailor is entitled to a presumption that his disability is service-related. They explained that a bicuspid aortic valve is not the type of abnormality that causes hypertension. (Exhibits 11-13.)

9. In September 2021, the board denied Mr. Shailor’s application with respect to accidental disability. He timely appealed. Subsequently, the board granted Mr. Shailor ordinary disability retirement benefits. (Stipulations 10-12; exhibits 1-2.)

### **Analysis**

A Massachusetts public employee is entitled to retire for accidental disability if he or she is permanently disabled as a result of a workplace injury or hazard. G.L. c. 32, § 7(1). There is no question that Mr. Shailor is permanently disabled. The dispute focuses on whether the disability is the result of his public employment.

In the usual case, § 7(1) demands a “natural and proximate” causal connection. *Noone v. Contributory Ret. Appeal Bd.*, 34 Mass. App. Ct. 756, 758 n.4 (1993). That requirement is “strict.” *Fender v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 755, 761 (2008). It may be difficult to satisfy in cases of hypertension or heart disease produced by long years of stressful work. The heart law ameliorates this problem by providing that:

any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a . . . permanent member of a police department [or a first responder in various other organizations] . . . shall, if he successfully passed a physical examination on entry into such service . . . which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.

G.L. c. 32, § 94. When the heart law’s prerequisite conditions are satisfied, the member is excused from proving causation in the first instance; the causation element is then viewed as satisfied unless it is disproved by a preponderance of the evidence. *Williams v. Norfolk Cty. Ret. Bd.*, No. CR-03-556, at \*3 (CRAB Dec. 23, 2004, *S.C.*, CRAB Apr. 2, 2007).

The question here is whether the heart law’s prerequisites are satisfied. It is clear that Mr. Shailor suffers from a “condition of impairment of health caused by hypertension.” § 94. That condition has resulted in Mr. Shailor’s “total or partial disability.” *Id.* The disability materialized while Mr. Shailor was a “permanent member of a police department.” *Id.* He “successfully passed a physical examination on entry into . . . service.” *Id.*

The board’s position is that the findings of Mr. Shailor’s February 1998 examination prevent the heart law’s presumption from being triggered. The parties agree that Mr. Shailor’s bicuspid aortic valve is a symptom of “heart disease.” § 94. They also agree that the February 1998 exam preceded Mr. Shailor’s entry into service with Rehoboth.

The findings of the February 1998 exam were very minor: they did not disqualify Mr. Shailor from police service, and they presented no apparent cause for medical concern. These details standing alone would not defeat the board’s argument, because the case law has ascribed a literal meaning to § 94’s phrase, “any evidence . . . .” In *Sullivan*, a preemployment examiner took one high blood pressure reading, described it as potentially transient, and categorized the applicant as “definitely not an employment risk.” The applicant was not entitled to the benefit of the heart law’s presumption, because:

The word “any” is clear and unequivocal. It is undisputed that there was evidence of hypertension on plaintiff’s pre-employment examination. . . . The question . . . is . . . whether the preemployment physical . . . revealed *any* evidence of hypertension.

*Sullivan v. Contributory Ret. Appeal Bd.*, 61 Mass. App. Ct. 1106 (2004) (unpublished memorandum opinion). *See also Cabral v. Fall River Ret. Bd.*, No. CR-15-673, at \*18 (DALA June 5, 2020) (collecting cases).

On the other hand, Mr. Shailor’s case presents an issue not shared by *Sullivan*. The medical condition implicated by the preemployment physical in *Sullivan* was hypertension, the same condition that ultimately disabled the member. Mr. Shailor’s preemployment physical disclosed a congenital valve defect unconnected to his now-disabling hypertension. The board does not dispute the medical panel’s unanimous view of this point of medical fact. *See Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985).

The heart law makes its presumption unavailable specifically when the preemployment physical revealed evidence “. . . of such condition.” The words “such condition” refer back to the phrase, “any condition of impairment of health . . . *resulting in total or partial disability . . .*” (emphasis added). It follows that a preemployment physical makes the heart law’s presumption unavailable only if it revealed evidence of the condition that has resulted in the member’s disability. The magistrate in *Cabral* explained:

The use of the language “of such condition” establishes a required link between the condition revealed in the physical and the disabling condition. . . . [T]he legislature chose to bar the operation of the presumption only in those cases where there is a relationship between the current condition and the findings in the initial physical examination.

*Cabral, supra*, at \*20. *See also id.* at \*20-23 (collecting cases).

Mr. Shailor’s disabling “condition of impairment of health” is hypertension. His preemployment physicals, including the one performed in February 1998, did not reveal evidence “of *such* condition.” G.L. c. 32, § 94 (emphasis added). The heart law’s presumption that Mr. Shailor sustained his disabling hypertension in the line of duty is therefore triggered.

The board concedes that the presumption is not overcome here by contrary “competent evidence.” *Id.*

**Conclusion and Order**

In view of the foregoing, Mr. Shailor is entitled to retire for accidental disability. The board’s contrary decision is REVERSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate