

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Barbara Shaw,
Petitioner,

No. CR-24-0375

Dated: April 25, 2025

v.

Boston Retirement System,
Respondent.

ORDER GRANTING SUMMARY DECISION

Petitioner Barbara Shaw appeals from a decision of the Boston Retirement Board (board) denying her application for accidental death benefits under G.L. c. 32, § 9. The board has filed a motion for summary decision, which the petitioner has not opposed.

I

The following facts are beyond genuine dispute. *See generally* 801 C.M.R. § 1.01(7)(h); *Goudreau v. Nikas*, 98 Mass. App. Ct. 266, 269-70 (2020); *Caitlin v. Board of Reg. of Architects*, 414 Mass. 1, 5-7 (1992).

The petitioner was married to Robert Shaw, who served as a Boston firefighter for more than thirty years. In 1999, Mr. Shaw applied to retire for accidental disability, citing diagnoses of hypertension and peripheral vascular disease. The application was allowed on the basis of the heart law, G.L. c. 32, § 94.

In 2023, Mr. Shaw was diagnosed with lung cancer. He passed away soon after that. The petitioner then applied for accidental death benefits. She did not present expert opinions in support of the application.

Dr. Christine Reardon studied the case on the board's behalf. She concluded that Mr. Shaw's death "was a consequence of lung cancer." Dr. Reardon added that "hypertension and peripheral vascular disease . . . are not risk factors for the development of lung cancer." In an

earlier report, Dr. Reardon had also commented: “It certainly could be argued that Mr. Shaw’s death . . . was strongly related to inhalation and exposure to hazardous gases, fumes, and smoke during his years of [firefighting].”

In June 2024, the board denied the petitioner’s application. This timely appeal followed.

II

The survivors of deceased public employees are entitled to accidental death benefits in circumstances specified by G.L. c. 32, § 9(1). As a general rule, such benefits are payable only when an actively working employee “died . . . while in the performance of[] his duties.” *Id.*

The last sentence of § 9(1) creates an exception to the general rule: it allows benefits to be paid when a retired employee’s death “was the natural and proximate result of the injury or hazard on account of which [the employee] was retired.” *Id.* For purposes of this standard, it is insufficient for the survivor to show a causal connection “between the condition causing death and the employee’s prior work.” *Burke v. Contributory Ret. Appeal Bd.*, 34 Mass. App. Ct. 212, 216 (1993). Rather, the employee’s original retirement and subsequent death must “stem from *the same* personal injury or hazard.” *Id.* at 215 (emphasis added).

It is beyond genuine dispute that Mr. Shaw originally retired with cardiovascular conditions and subsequently died of lung cancer. It would be possible to view those medical issues as all “stem[ming] from the same personal injury or hazard,” *id.*, if the original cardiovascular conditions were the cause of the subsequent cancer. *See Palermo v. Revere Ret. Bd.*, No. CR-15-13, 2017 WL 11905820 (Contributory Ret. App. Bd. Dec. 21, 2017). But the only record evidence about the relationship among Mr. Shaw’s serial diagnoses is Dr. Reardon’s opinion that “hypertension and peripheral vascular disease . . . are not risk factors for the development of lung cancer.”

The requirements of § 9(1) are also satisfied “where the same traumatic incident at work produces two distinct physical impairments, one of which is immediately disabling and the other of which causes death.” *Namay v. Contributory Ret. Appeal Bd.*, 19 Mass. App. Ct. 456, 460 (1985). This rule is not implicated here. It may be that Mr. Shaw’s cardiovascular disease and lung cancer were both caused by his many years of firefighting.¹ But the career-long exposures to stress and smoke that tend to produce cardiovascular and pulmonary problems are not the kinds of “traumatic incidents” that *Namay* had in mind. *See McLean v. City of Medford*, 340 Mass. 613, 616 (1960); *Gibson-Rock v. Boston Ret. Bd.*, No. CR-21-180, 2024 WL 215935, at *4 (Div. Admin. Law App. Jan. 12, 2024).

Mr. Shaw served the Commonwealth in a valuable and dangerous position. But on the facts established beyond genuine dispute, his retirement and death were not the results of the same, single work-related cause. The petitioner therefore does not qualify for accidental death benefits under the applicable statutory conditions.

III

In view of the foregoing, it is ORDERED that the board’s motion for summary decision is ALLOWED. Summary decision is hereby entered to the effect that the board’s decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

¹ It is not necessary to decide whether cases of lung cancer are covered by the lung law, G.L. c. 32, § 94A, or—as the board says—only by the more restrictive cancer law, G.L. c. 32, § 94B. Still, it may be useful to observe that the general trend of the cancer law is to *expand* the universe of firefighters whose illnesses are presumed to be work-related. *Cf. Namay*, 19 Mass. App. Ct. at 460; *Wolfe v. Gormally*, 440 Mass. 699, 705-06 (2004).