

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

MARTHA SHEA,

Petitioner-Appellant

v.

MARLBOROUGH RETIREMENT BOARD,

Respondent-Appellee.

CR-14-185

DECISION

Respondent Marlborough Retirement Board (MRB) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA) reversing its decision to deny petitioner Martha Shea's application for accidental disability benefits. The DALA magistrate heard the matter on April 5, 2016 and admitted thirty-three exhibits into evidence. The DALA decision is dated August 25, 2017. The MRB filed a timely appeal to us.

After considering all the evidence in the record and the arguments presented by the parties, we adopt the magistrate's Findings of Fact 1 – 28 as our own and incorporate the DALA decision by reference. For the reasons discussed below, we affirm.

Background. Det. Shea was a police officer for the Marlborough Police Department for twenty-four years. She began as a dispatcher in 1990 and then joined the police force after attending the police academy. She was assigned to work on rape, child and elder abuse and domestic violence cases in 1993 and was later promoted to Det. in 1998.¹

Det. Shea's work involved interviewing victims of sexual assault and witnesses, accompanying them to the hospital, obtaining restraining orders and warrants, obtaining and

¹ Exhibit 4, 13; Finding of Fact 1.

preserving evidence, completing police reports, and testifying in court. Because she worked in the community that she resides, Det. Shea was sometimes familiar with the parties involved.² By 1997, Det. Shea complained to her superior officers of being overworked and feeling stressed working on child sexual abuse matters. She was assigned a series of partners, who assisted her on a part-time basis, but this process failed to last for various reasons. She was without a partner for six years and at one point, was offered return to patrol duty on the midnight shift. She declined this opportunity because she could not accommodate that schedule as a single parent.³

Det. Shea continued experiencing work-related stress, complaining of chest pains, headaches, panic attacks, gastrointestinal issues, nightmares and insomnia.⁴ In October 2003, she attended an eight week stress reduction program at UMass Medical School and a three hour program entitled “Witnessing Violence in Our Clients’ Lives: Including Ourselves in the Compassionate Circle.”⁵

In 2006, with an increase in her sexual assault and domestic violence caseload, Det. Shea reported increase in stress and anxiety. Consequently, she requested the Police Chief to reduce her caseload. In response to her request, she was relieved of working on sexual assault cases.⁶ From February to March 2006, she was treated by a mental health counselor, Diane Rigney, LMHC. She reported feeling stressed and overworked by her caseload and complained of sleep difficulties, increased anxiety, panic attacks, calling in sick, avoidance of situations possibly resulting in conflict and increased drinking. Additionally, she reported the ending of a personal relationship with Lt. Michael Amoros, a coworker.⁷

In 2007, Det. Shea investigated a complaint by a female who was being stalked by an individual who worked for a phone company. During the investigative process, the stalker hacked into Det. Shea’s email and cell phone accounts, as well as her daughter’s phone account, to obtain their personal information.⁸ Det. Shea filed a police report with the police department

² Ex. 13; FF 2.

³ FF 3.

⁴ FF 4.

⁵ Ex. 14, 16; FF 7.

⁶ Ex. 16 Report of Dr. Rater.

⁷ Ex. 12; FF 8, 9.

⁸ FF 10.

on March 24, 2008 but did not report any psychological harm resulting from this incident.⁹ While the stalker in this case was apprehended and imprisoned, Det. Shea ruminated about her own safety because she was informed by prison guards that the stalker and other inmates were talking about her. This caused an increase in her alcohol consumption.¹⁰

In January 2011, Det. Shea assisted in the incarceration of a perpetrator in a domestic violence case.¹¹ However, by September 2011, the perpetrator was released from prison. She received reports from friends of the victim in the domestic violence case of his violations of the restraining order and their concerns for the victim's safety. Nevertheless, the judge declined to send the perpetrator back to prison. This decision caused Det. Shea to take a week of sick leave in October 2011.¹² Det. Shea then reinitiated treatment with Ms. Rigney in November 2011, who referred her to a psychiatrist, Dr. Mitchell Wangh.¹³ At that time, she was approved for a six-month leave of absence under the Family Medical Leave Act (FMLA).¹⁴ She began treatment with Dr. Wangh in February 2012, who diagnosed her with work-related post traumatic stress disorder (PTSD). After informing Chief Leonard of her medical issue, she was requested to obtain a medical note from Dr. Wangh addressing her diagnosis and her ability to return to work. Dr. Wangh explained in his letter of March 14, 2012 that Det. Shea was unable to return to work due to PTSD and because the nature of her position exposed her to violence and crime affecting her condition.¹⁵

On September 12, 2012, Det. Shea completed a Notice of Employee Accident form at the request of the City of Marlborough. She reported having severe and disabling PTSD as a result of years of exposure to violent victim crimes.¹⁶ Lieutenant Amoros, with whom Det. Shea had a long-term personal relationship, completed an Accidental Investigation Report –

⁹ Ex. 15; FF 10.

¹⁰ Pet. Ex. 3,4 13; Resp. Ex. 16; FF 10.

¹¹ Ex. 16; FF 11.

¹² FF 11.

¹³ FF 12.

¹⁴ FF 11.

¹⁵ Ex. 12; FF 13.

¹⁶ Ex. 4; FF 15.

Supervisor Form on September 17, 2012. He stated that Det. Shea was permanently disabled from a job-related injury and reported that her symptoms continued to worsen.¹⁷

Det. Shea applied for G.L c. 41, § 111F injury-on-duty benefits.¹⁸ As part of the application process, Det. Shea was examined by Drs. Rater and Ornstein. After examining her on October 4, 2012, Dr. Rater assessed her with a panic disorder. He reported that she had a diagnosis of PTSD but explained that it was an inaccurate diagnosis given that it required having witness or experience a threat of death or serious injury. He determined that her panic disorder was unrelated to any incident at work and that she did not suffer from PTSD because she was not a witness or experienced a threat of death or serious injury. He deemed that she had not undergone enough intensive treatment to manage her anxiety and that it was her decision not to return to work. He opined that Det. Shea's mental health condition did not limit or restrict her capacity to work at her present job.¹⁹ Dr. Ornstein examined Det. Shea on April 9, 2013. He reported that she suffered from PTSD resulting from exposure in her job. He concluded that she suffered from a psychiatric condition that was caused by her work experience and disabled her from performing her work duties. While he stated that she could improve with more robust treatment and make her employable in the future, he found that it was unlikely she would recover to the degree necessary to return to her job as a police officer and detective.²⁰ While her application was initially denied, Det. Shea was eventually granted § 111F benefits retroactive to March 14, 2012.²¹

Chief Leonard also filed an application with the MRB seeking Det. Shea's involuntary retirement for accidental disability retirement. As the basis for this application, he reported that Drs. Rater and Ornstein determined that Det. Shea suffered from job-related PTSD and was unable to perform her duties.²²

On May 23, 2013, Det. Shea filed an application for accidental disability retirement benefits. She reported that for the period November 1994 through November 2011, she was

¹⁷FF 15.

¹⁸ FF 14.

¹⁹ Ex. 16; FF17.

²⁰ Ex.13, 16; FF 17, 18.

²¹ Ex. 1.

²² Ex. 5; FF 19.

assigned to be the “rape investigation officer and the officer investigating violent victim crimes, including but not limited to, child abuse, domestic violence, sexual abuse (child, adult, and elder), stalking, etc.” She explained that she developed PTSD from repeated exposure to these traumatic events resulting in her disability.²³ Dr. Wangh completed the Physician’s Statement dated May 22, 2013 in support of her application. He opined that she was unable to perform her duties due to PTSD and that her disability began on November 11, 2011 and prior.²⁴

A regional medical panel was convened to examine Det. Shea in connection with her application. The medical panel was unanimous in its determination that she was permanently disabled as a result of PTSD and that her incapacity might be the natural and proximate result of her job. Dr. Goldberg examined Det. Shea on November 8, 2013. He diagnosed her with PTSD, major depressive disorder without psychotic features and alcohol abuse. He answered all three statutory questions affirmatively. He disagreed with Dr. Rater that Det. Shea did not suffer from PTSD because she did not experience first hand threat of death or serious injury.²⁵ Dr. Silberman examined Det. Shea on December 11, 2013. He also found that she suffered from PTSD and answered all three questions affirmatively. He, too, disagreed with Dr. Rater, explaining that his definition for PTSD was too narrowly construed.²⁶ Finally, Dr. Hamer examined Det. Shea on December 18, 2013. The doctor diagnosed her with chronic PTSD and ruled out bipolar disorder and answered all three questions affirmatively.²⁷

Petitioner’s Motion to Dismiss

We deny Det. Shea’s motion to dismiss the MRB’s notice of objection, in which she complained that the objection letter did not include all the legal arguments that the MRB later made in its memorandum. The motion is based on our Standing Order 2008-1, which was adopted to streamline the presentation of appeals before us. It is not intended to provide procedural traps, but to assist the parties in presenting a case on the merits.²⁸ The provision requiring identification of the portion of the DALA decision that is the subject of the objection, ¶

²³ Ex. 1; FF 20.

²⁴ Ex. 2; FF 21.

²⁵ Ex. 3.

²⁶ Ex. 4; FF 6.

²⁷ Ex. 5.

²⁸ See generally *Monahan v. Washburn*, 400 Mass. 126, 128-129 (1987) (law favors decision on merits); *Neuwirth v. Neuwirth*, 85 Mass. App. Ct. 248, 263-264 (2014) (same).

4.a.(2)(iii), is not meant to require that every argument be made in the notice of objection. It is simply intended to assist in focusing the issues. Under ¶ 4.a.(3)(b) the appellant provides its detailed arguments in its memorandum, and the appellee then has a full opportunity to respond to those arguments in its response memorandum. We consider the motion to be without merit.

Notice

General Laws c. 32, § 7(1) includes the following limitation relating to accidental disability retirement benefits:

[N]o [accidental disability] retirement shall be allowed unless such injury was sustained or such hazard was undergone within two years prior to the filing of such application, unless written notice thereof was filed with the board...within ninety days after its occurrence.

Det. Shea filed her application for accidental disability retirement benefits on May 23, 2013. Thus, in the absence of a notice of injury, the earliest date on which an injury may be considered as supporting Det. Shea's application is May 24, 2011. Nevertheless, notice of injury is not required if the applicant received workers' compensation benefits. G.L. c. 32, § 7(3). However, workers' compensation benefits are not applicable to police officers. Instead, Det. Shea received G.L. c. 41, § 111F benefits, which are benefits awarded to a police officer when the officer is "incapacitated for duty because of injury sustained in the performance of [her] duty." In her application, Det. Shea marked that she received Section 111F benefits, which was connected to her claim for accidental disability retirement benefits.²⁹ While the magistrate found there was insufficient evidence in the record to support this, MRB did not challenge her receipt of these benefits. Thus, this may serve as an exception to the notice requirement of § 7. Det. Shea may rely on incidents beyond the two year period from her application date as bases for her claim. *Sugrue v. CRAB*, 45 Mass. App. Ct. 1 (1998).

Gradual deterioration of emotional condition

To be eligible for accidental disability retirement benefits under G. L. c. 32, § 7, an applicant must establish that he is "unable to perform the essential duties of his job and that such inability is likely to be permanent . . . by reason of a personal injury sustained or hazard

²⁹ Ex. 1.

undergone as a result of, and while in the performance of, his duties.” G.L. c. 32, § 7(1). An applicant must prove that the disability stemmed from either (1) a single work-related event or series of events, or (2) if the disability was the result of gradual deterioration, that his employment exposed him to an “identifiable condition . . . that is not common or necessary to all or a great many occupations.” *Blanchette v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 479, 485 (1985). An applicant, such as the Plaintiff, may also be entitled to accidental disability retirement benefits when a work injury aggravates a pre-existing condition. *Robinson v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 634, 638 (1985). Emotional or mental disability is recognized as a personal injury, which can serve as the basis for accidental disability retirement benefits. *Fender v. Contributory Ret. App. Bd.*, 72 Mass. App. Ct. 755, 761-62 (2008).

Under G.L. c. 32, § 7(1), an applicant must prove that the work-related injury was the “natural and proximate cause” of the disability. *Campbell v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 1018, 1018-19 (1984). When an applicant seeks accidental disability retirement benefits for a mental or emotional disability, he must also prove that the predominant cause of the injury was work-related. G.L. c. 152, § 1(7A); *see also Fender*, 72 Mass. App. Ct. at 761 (noting that the term “personal injury” as defined in G.L. c. 152, § 1(7A) is given the same meaning under G.L. c. 32). The applicant bears the burden of proving the causal relationship by a preponderance of the evidence. *Murphy v. Contributory Ret. App. Bd.*, 463 Mass. 333, 345 (2012); *Lisbon v. Contributory Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996) (applicant must show it was “more likely” that the disabling injury, flowing from a work accident, was directly caused by or was the aggravation of a preexisting condition, “than by the natural, cumulative, deteriorative effects of his preexisting diseased condition and unhealthy habits.”).

Det. Shea relied on the gradual deterioration theory that her emotional condition gradually deteriorated because of her exposure to violent victim crimes. That was the basis expressed in her application,³⁰ in her physician’s statement,³¹ and the opinions of the psychiatric medical panel.³² To prevail under this theory, Det. Shea must establish the strict causal nexus imposed by G.L. c. 32, § 7 – that her employment was the natural and proximate cause of her

³⁰ Petitioner Ex. 1.

³¹ Petitioner Ex. 2.

³² Petitioner Ex. 3-5.

incapacity. *Campbell v. Contributory Retirement Appeal Bd.*, 17 Mass. App. Ct. 1018 (1984). Specifically, she must show that her exposure to accounts of serious criminal matters is not typical of a "great many occupations."³³ After considering the evidence in the record, we agree with Det. Shea's contention that her psychiatric condition was the natural and proximate result of a personal injury she sustained by reason of exposure to "an identifiable condition not common and necessary to all or a great many occupations." *Blanchette*, 20 Mass. App. Ct. at 487; *Sugrue*, 45 Mass. App. Ct. at 6-7; *Fender v. Contributory Retirement Appeal Bd.*, 72 Mass. App. Ct. 755, 761 (2008).

In her application, Det. Shea noted injuries occurring from November 1994 through November 2011. She reported that during this period, she was assigned to be the "rape investigation officer and the officer investigating violent victim crimes, including but not limited to, child abuse, domestic violence, sexual abuse (child, adult, and elder), stalking, etc." She explained that she developed PTSD from repeated exposure to these traumatic victim crimes resulting in her disability.³⁴ Because Det. Shea was familiar with individuals involved in her investigations and because she and a family member were also directly impacted by one of her investigations, these experiences were unique to her employment as a police officer, which distinguishes her employment from a variety of other occupations where "employees face similar pressures and demands." *Blanchette*, 20 Mass. App. Ct. at 487. As the DALA decision noted, because Det. Shea resided in the community where she worked, she knew individuals involved in the cases she investigated. Det. Shea investigated the grandson of a police sergeant for claims of sexually assaulting two of his cousins in her first rape investigation.³⁵ In 2005, she investigated a claim that an individual was raped by her best friend's father, who did her taxes.³⁶ Her investigative work on sexual assault and domestic violence cases also lead her to be a victim in a stocking incident in 2008. Det Shea investigated a stalker who worked for a telephone company. The stalker hacked into a female's bank account and posted her picture on-line, along with an advertisement encouraging sexual violence toward the female. During the investigation, the

³³ See *Adams v. Contributory Retirement Appeal Bd.*, 414 Mass. 360, 365-366 (1993) (petitioner's burden).

³⁴ Petitioner Ex. 1.

³⁵ FF 2.

³⁶ *Id.*

stalker hacked into Det. Shea's email and cellphone account and the cellphone account of her daughter. The suspect also broke into her home and left cryptic voicemail messages. Det. Shea filed a police report regarding these events on March 24, 2008. Despite the fact that the perpetrator was apprehended, she still feared for her life because prison guards informed her that the perpetrator and other prisoners were talking about her.³⁷ Not many individuals or professions investigating or taking part in the response to crime know individuals being investigated or become a victim themselves or have family members become victims during the investigations. These factors were uncommon enough to distinguish Det. Shea's exposure to violent victim crimes from other occupations within the judicial system and law enforcement. We deem that Det. Shea was exposed to "an identifiable condition not common or necessary to all or a great many occupations."

As to causation, the record shows that Det. Shea has a long history of PTSD arising from the stress of her work and which caused her to seek medical treatment. Her complaints went as far back as 1997 when she first informed the Chief of Police of her stress and her request to remove her from investigating sexual assault and domestic violence cases. At one point, the Chief of Police provided part-time partners to assist with her investigations, but the partners were short-lived. With the increase in her workload, she sought therapy in 2006 to address anxiety and stress from work. She stopped working on November 11, 2011 and was approved for FMLA. Det. Shea explained that she was overcome after a judge denied a request to reincarcerate the perpetrator in a domestic violence case after he violated the terms of his release by making threats to the victim. She returned to therapy in 2011 after being approved for FMLA and was then referred for treatment with a psychiatrist in 2012. The medical panel, Dr. Wanh and Dr. Ornstein, concluded that Det. Shea developed PTSD as a result of repeated exposure to traumatic victim crimes, that her disability was permanent, and that she could not perform her work duties as a police officer. The magistrate found their opinions persuasive and credited their opinions in his decision. We, too, find those opinions compelling and determine that the various stressors created by her work, including the content of her criminal cases, the familiarity with individuals involved in her investigative work and the fact that her and a family member also became directly involved, contributed to her PTSD and these factors proximately caused her

³⁷ Ex. 13, 15; FF 10; Petitioner Testimony.

disability. Accordingly, Det. Shea has met her burden to establish entitlement to accidental disability retirement benefits pursuant to G.L. c. 32, § 7.

Because we determined that Det. Shea suffered an emotional disability as a result of a gradual deterioration by exposure to an “identifiable condition that is not common or necessary to all or a great many occupations” from her employment, we need not address her claim based on the event or series of events theory.

Conclusion

The decision of the DALA magistrate is affirmed. Det. Shea is entitled to accidental disability retirement benefits. ***Affirm.***

SO ORDERED.

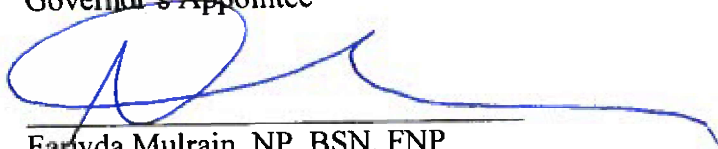
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Date: April 11, 2024