COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Donna Sinopoli**,

Petitioner

v. Docket No. CR-15-223

**State Retirement Board**,

Respondent

**Appearance for Petitioner**:

Melissa M. Lanouette, Esq.

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**Appearance for Respondent**:

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State Retirement Board

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**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

The denial of the petitioner’s application for accidental disability retirement benefits is affirmed because she did not prove that her disability was caused by her job and even if she had so proved, conflicts with supervisors and coworkers are common to many jobs.

**DECISION**

 The petitioner, Donna Sinopoli, appeals the denial by the State Board of Retirement (SRB) of her application for accidental disability retirement benefits.

 I held a hearing on February 4, 2015, which I recorded digitally. Ms. Sinopoli testified, and called another witness, Donna Bruseghini, an employee of Southern Berkshire Probation Office. The SRB called no witnesses. I accepted into evidence 19 exhibits. Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. Ms. Sinopoli was a Probation Case Specialist from January 24, 1998 to May 13, 2013. Her duties were clerical and secretarial. (Exs. 3, 8.)

 2. Ms. Sinopoli worked at the Berkshire Superior Court Probation Office. (Exs. 3, 8.) 3. On December 5, 2011, Ms. Sinopoli was temporarily transferred to the Southern Berkshire District Court at her request. She requested the transfer because of the stress of working in the Berkshire Superior Court Probation Office. (Ex. 8.)

 4. On June 11, 2012, Ms. Sinopoli was transferred to the Franklin/Hampshire Juvenile Court in Greenfield, but did not report for work and never actually worked there. She was eventually terminated. (Sinopoli testimony; Ex. 8.)

 5. On September 1, 2011, a custodian in the Berkshire County Superior Courthouse wrote a letter to Ms. Sinopoli’s supervisor and two others, complaining that when the trash container near her desk was full, she threw trash on the floor, rather than using another container nearby, closer than three feet away. He also complained that she had ripped up toilet paper and thrown the pieces in a corner of a women’s restroom so that she could complain about how filthy the courthouse was. (Ex. 9.)

 6. Ms. Sinopoli did not know about this letter until 2014, after she had left the Probation Office, when she was preparing this appeal and obtained her personnel file. (Ex. 9; Sinopoli testimony.)

 7. On December 6 through 10, 2010, while working at the Berkshire Superior Court, Ms. Sinopoli took sick leave. (Ex. 8.)

 8. On September 20, 2011, Ms. Sinopoli’s supervisor at the Berkshire Superior Court Probation Office called her into a short meeting to discuss the sick leave that she had taken eight months before. He memorialized the meeting in an Employee Conference Report. (Sinopoli testimony; Ex. 8.)

 9. In the Employee Conference Report, Ms. Sinopoli’s supervisor wrote the following: Ms. Sinopoli would need to bring in a doctor’s note if she used three or more days of sick leave, and would need to have her sick leave approved in advance and verified. The issue would be revisited at the end of the calendar year. If Ms. Sinopoli violated the corrective action he had indicated, she could be disciplined. (Ex. 8.)

 10. After the meeting, Ms. Sinopoli left her supervisor’s office and told a coworker, Ms. Bruseghini, about the meeting. The supervisor opened his office door and told them to get back to work. She said something like, “This is a joke.”[[1]](#footnote-1) The supervisor, who had been climbing stairs, ran down them, ran at Ms. Sinopoli, waved his fists, and, while close to Ms. Sinopoli, screamed something like, “That’s it, I want you out of here.” (Sinopoli and Bruseghini testimony.)

11. On December 3, 2011, Ms. Sinopoli told a coworker that she had called Boston (presumably the main office of the Probation Office) and said that if she were not transferred, she would punch her supervisor in the face. The coworker conveyed her comment to the supervisor. (Sinopoli testimony; Ex. 9.)

 12. On May 4, 2012, Ms. Sinopoli’s supervisor in the second courthouse where she worked, the Southern Berkshire District Court, called her in for a meeting, which he memorialized in an Employee Conference Report. (Ex. 8; Sinopoli testimony.)

 The report listed 10 allegations.

 A. On May 1, 2012, Ms. Sinopoli placed her ear to her supervisor’s door to eavesdrop on a telephone conversation.

 B. Ms. Sinopoli had been discussing with staff members her negative experience in her previous courthouse.

 C. Ms. Sinopoli had not been responding to probationers, members of the public, and other people who appeared at the front counter.

 D. Ms. Sinopoli had been leaving her desk and sitting in probation officers’ offices.

 E. Ms. Sinopoli had allegedly been sending a high volume of personal email at work.

 F. Ms. Sinopoli had been opening office windows without the agreement of her two clerical coworkers. She allegedly disregarded the requests of her coworkers not to wear multiple layers of clothes that resulted in her needing to cool down. The report characterized her behavior as “selfish” and alleged that she had the “temperament” of a “bully.”

 G. Ms. Sinopoli wore clothes to work that she did not feel were appropriate to wear in court and then refused to enter the courtroom.

 H. Ms. Sinopoli sometimes did not answer the main telephone line when it rang.

 I. Ms. Sinopoli sometimes failed to refile supervision folders at the end of her shift.

 J. Ms. Sinopoli sometimes procrastinated when given instructions and assignments.

 13. After this meeting, Ms. Sinopoli felt sick, suffered headaches, couldn’t think straight, and felt devastated. (Sinopoli testimony.)

 14. On April 28, 2013, Ms. Sinopoli applied for accidental disability retirement benefits. (Ex. 3.)

15. On January 6, 2015, Ms. Sinopoli also applied for ordinary disability retirement benefits. (Ex. 15.)

 16. On her application for accidental disability retirement benefits, Ms. Sinapoli wrote that the medical reason for her application was post-traumatic stress disorder. (Ex. 3.)

 17. On her application, she wrote that she has been unable to perform all duties required of her position since May 2012. (Ex. 3.)

 18. When asked to describe the times of her personal injury as specifically as possible, Ms. Sinopoli wrote,

2010 started in Superior Court, Pittsfield MA until December of 2011, until I transferred to Southern District Court until May of 2012. Then transferred to Hadley/Greenfield.

(Ex. 3.)

 19. When asked to describe the incidents, Ms. Sinopoli described her symptoms:

Chest pain w/ arrhythmia, severe headaches[,] severe heartburn, burning tongue, dizziness, blurred vision and upset stomachaches daily.

(Ex. 3.)

 20. On the Treating Physician’s Statement, dated August 17, 2013, Dr. Thomas McNulty wrote that Ms. Sinopoli was last able to perform her essential duties in June 2012. (Exs. 4, 8.)

 21. Dr. McNulty diagnosed Ms. Sinopoli’s condition as panic attacks, severe anxiety, and traumatic incident with post-traumatic stress disorder. (Ex. 5.)

 22. On May 2, 2014, a medical panel jointly examined Ms. Sinopoli. It consisted of Dr. Thomas R. Sciascia, a neurologist; Dr. Melvyn Lurie, a psychiatrist; and Dr. Joseph Albeck, also a psychiatrist. (Ex. 7.)

 23. The medical panel opined that Ms. Sinopoli was mentally incapable of performing the essential duties of her position, her incapacity was likely permanent, and her incapacity was such as might be the natural and proximate result of the personal injury she sustained. (Ex. 7.)

 24. The medical panel opined that Ms. Sinopoli had extreme anxiety. (Ex. 7.)

 25. On May 12, 2015, the SRB informed Ms. Sinopoli that despite the medical panel’s favorable certificate, it was denying her application because she had not met her burden of proof regarding causation. (Ex. 1.)

 26. On May 22, 2015, Ms. Sinopoli timely appealed. (Ex. 2.)

**Discussion**

 The direct issue in this case is not whether Ms. Sinopoli was unfairly targeted or disciplined; whether her supervisors or coworkers were unfair or unkind, or treated employees unequally; whether her supervisors and coworkers were blameworthy people who were investigated or terminated for matters unrelated to Ms. Sinopoli’s employment; or whether an old boys’ network controlled one or more courthouses or at least the probation offices. The issue is, as Ms. Sinopoli’s post-hearing brief recognizes, whether her job caused her disability. It is possible that if Ms. Sinopoli were unfairly targeted or disciplined, and her supervisors were unfair or unkind, or treated employees unequally, it caused her post-traumatic stress disorder. However, she has not proved causation.

 In her post-hearing brief, Ms. Sinopoli states that the two primary sources of her disability were the December 2011 and May 2012 employee conferences. She testified that of the 10 allegations raised against her in the May 2012 meeting, some were partly true. The rest she called “fabrications.” (Sinopoli testimony.) I have not made findings about how many and how much of these allegations were true.

 Regarding the allegation that Ms. Sinopoli placed her ear to her supervisor’s door to eavesdrop on a telephone conversation, Ms. Sinopoli denied placing her ear to the door. She testified that she had been close to the door while engaged in filing, and admitted that she was intrigued by the conversation about her and intended to overhear it.

 Regarding the allegation that Ms. Sinopoli had discussed with staff members her negative experience in her previous courthouse, she testified that other employees discussed the workplace without being disciplined.

 Ms. Sinopoli denied the allegation that she had not been responding to probationers, members of the public, and other people who appeared at the front counter.

 Regarding the allegation that Ms. Sinopoli had been leaving her desk and sitting in probation officers’ offices, she testified that other employees left their desks without being disciplined.

 Regarding the allegation that Ms. Sinopoli had been sending a high volume of personal email, she testified that she sometimes used work email for personal email; she emailed friends and her son’s coach about the athletic schedule; other employees sent personal email; and she was not aware that supervisors had talked to other employees about doing so.

 Regarding the allegation that Ms. Sinopoli had opened windows without the agreement of her two clerical coworkers, she testified that she needed fresh air and sense of an escape route to avoid anxiety.

 Ms. Sinopoli denied the allegation that she sometimes did not answer the main telephone line when it rang.

 Regarding the allegation that Ms. Sinopoli sometimes procrastinated, she testified that the office was slow and she stretched out her duties to fill the day.

 The bottom line is that Ms. Sinopoli felt sick, suffered headaches, couldn’t think straight, and felt devastated (Sinopoli testimony) when her supervisor told her that some of her conduct was unacceptable, some of which Ms. Sinopoli admitted engaging in.

Again, in her post-hearing brief, Ms. Sinopoli states that the two primary sources of her disability were the December 2011 and May 2012 employee conferences. However, she testified about other incidents, and implied that they had contributed to her disability. The other incidents include the following.[[2]](#footnote-2)

 In December 2010, Ms. Sinopoli arrived at work a few minutes late. Her supervisor at the Berkshire County Superior Court called her into his office. She apologized for having been late, stated that she was sick and should have called in, and then took sick leave for the rest of the week. (This was the sick leave that later led to the meeting and Employee Conference Report in September 2011.) When she returned, her supervisor called her into his office and asked for a doctor’s note. Ms. Sinopoli said that she did not have one because she had not gone to the doctor. The supervisor expressed disbelief that Sinopoli had been sick. (Sinopoli testimony.)

 Around August 2011, Ms. Sinopoli’s supervisor in the Berkshire County Superior Court started requiring her, when she took sick leave, to provide a doctor’s note and explanation for the leave. He later changed the policy and did not require an explanation. Ms. Sinopoli did not think that the supervisor enforced the same policy, or at least as rigorously, with other employees but was not sure. (Sinopoli testimony.)

 Ms. Sinopoli’s supervisor in the Berkshire County Superior Court treated her differently than other employees, including calling her by her last name. (Sinopoli and Bruseghini testimony.) The supervisor asked Ms. Sinopoli how many times she had to use the restroom a day, a question that he didn’t pose to other employees. (Sinopoli testimony.)

 The supervisor talked to other employees about Ms. Sinopoli, instructing one not to lend Ms. Sinopoli the newspaper and not to answer the telephone because it was Ms. Sinopoli’s job. (Sinopoli testimony.)

 Ms. Sinopoli’s supervisor in the Berkshire County Superior Court had the windows, or at least the windows close to Ms. Sinopoli’s workspace, screwed shut. He had a self-closing device placed on an office door. Ms. Sinopoli insinuated that the supervisor did so because he had a controlling personality and/or he knew that Ms. Sinopoli, with her anxiety and need for an escape route, wanted open windows and doors. (Sinopoli testimony.)

 Ms. Sinopoli’s supervisor at the Berkshire County Superior Court was investigated, possibly in Summer 2010, because he had come to supervise a probationer who was his friend. Everyone in the Probation Office was interviewed, except Ms. Sinopoli. She does not know why she was not interviewed. (If the facts were as Ms. Sinopoli testified, they could not have been evidence that her supervisor or office singled her out for disfavor. It is hard to imagine that being interviewed for an investigation is a benefit, that not being interviewed for an investigation is a badge of disfavor, or that Ms. Sinopoli’s supervisor, who was being investigated, controlled the investigation or had anything to do with her not being interviewed.) Ms. Sinopoli suspected that her supervisor believed that she had leaked information leading to the investigation.

 As discussed above, on September 1, 2011, a custodian in the Berkshire County Superior Courthouse wrote a letter complaining that Ms. Sinopoli was creating more work for him, including intentionally. (Ex. 9.) Ms. Sinopoli apparently believes that this allegation is significant to her case. She testified that she did not strew trash in the restroom and called Ms. Bruseghini to testify that a trash problem continued in the restroom after Ms. Sinopoli stopped working in the courthouse. However, Ms. Sinopoli did not know about the custodian’s letter until after she left the Probation Office. She did not explain how a letter she did not know about until 2014 contributed to her post-traumatic stress disorder that allegedly left her unable to continue working in 2012.

 Ms. Sinopoli testified that she never harmed a coworker. This was apparently related to her comment that if she had not been transferred, she would have punched her supervisor in the face. The fact that Ms. Sinopoli did not harm a coworker does not matter to her appeal. Neither does her comment, except possibly to demonstrate that she was not a model employee. No evidence exists that she was disciplined for the comment, which she made two days before starting at a new courthouse. And Ms. Sinopoli has not explained how her commenting about punching her supervisor caused her post-traumatic stress disorder.

 It does not matter that the coworker who reported Ms. Sinopoli’s comment about punching her supervisor was later terminated, as Ms. Sinopoli testified. She admitted making the comment, which also doesn’t matter to this appeal. It does not matter that the custodian who wrote the letter was later terminated, as Ms. Sinopoli testified. The letter doesn’t matter.

 Many of Ms. Sinopoli’s allegations, whether or not true, are simply irrelevant to the cause of her PTSD.

 The medical panel’s opinion that Ms. Sinopoli’s job caused her disability is not dispositive and conclusive. *Blanchette v. Contributory Retirement Appeal Board*, 20 Mass. App. Ct. 479, 483 (1985). “The ultimate question of causation” is for the Contributory Retirement Appeal Board. *Narducci v. Contributory Retirement Appeal Board*, 68 Mass. App. Ct. 127, 134 (2007). And Ms. Sinopoli has the burden of proving causation. *Id.* at 129.

Ms. Sinopoli’s claim boils down to this: Because one supervisor unfairly accused her of abusing sick leave and then ran and screamed at her hostilely – but did not discipline her; another supervisor met with her to discuss criticism, some of which Ms. Sinopoli asserts was false, some of which was partly true, but did not discipline her; and her supervisors caused her miscellaneous indignities,[[3]](#footnote-3) Ms. Sinopoli was traumatized and suffers PTSD. The State Retirement Board was not convinced and it is entitled to be not convinced.

Furthermore, even if Ms. Sinopoli experienced “humiliating encounters and job conflicts with [her] superiors” and those caused “cumulative stress,” it

was not an identifiable condition...that is not common and necessary to all or a great many occupations.[citation omitted]...[J]ob conflicts and arguments with superiors and subordinates, including a series of incidents over several years creating feelings of “persecution” and unfair treatment and ultimately a diagnosed mental illness, do not distinguish [the applicant's] occupation from a wide variety of other occupations where employees face similar pressures and demands.

*Sugrue v. Contributory Retirement Appeal Board*,45 Mass. App. Ct. 1, 5-6 (1998) (citations, internal quotation marks, and hyphen omitted). “Unfortunately, some degree of workplace ill will is all too common in many occupations.” *Timothy Maginnis v. State Board of Retirement*, CR-04-1095 \*19 (DALA 2006).

 Because of the previous reasons (Ms. Sinopoli has not proved that her job caused her disability, and even if she did so prove, conflicts, arguments, and feelings of unfair treatment are common to jobs), I need not find that Ms. Sinopoli’s supervisors engaged in bona fide personnel actions. G.L. c. 152, § 1. Although the second Employee Conference Report, the one dated May 4, 2012, appears on its face to be professional and dispassionate, I cannot find whether either employee conference was a bona fide personnel action because the SRB did not call any witnesses. The fact that a supervisor engages in a personnel action or in a personnel action that on its face seems legitimate does not mean that it was a bona fide personnel action devoid of improper purpose, such as harassment of an employee.

**Conclusion and Order**

 Ms. Sinopoli has not proved that her job caused her disability. And if she had proved it, her application for accidental disability retirement benefits would still not prevail because conflicts with supervisors and coworkers are common to many jobs. The denial of the Ms. Sinopoli’s application for accidental disability retirement benefits is affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: June 10, 2016

1. She testified that she was referring to the allegation that she had abused sick leave. [↑](#footnote-ref-1)
2. I do not include these other incidents in the Findings of Fact because I do not make findings about whether these other incidents are true. [↑](#footnote-ref-2)
3. Ms. Sinopoli’s brief relies on the first two incidents, but her testimony also relies on the miscellaneous incidents. [↑](#footnote-ref-3)