

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Lloyd T. Smith,
Petitioner

v.

Docket No. CR-22-0163
Date: Oct. 4, 2024

Springfield Retirement Board,
Respondent

Appearance for Petitioner:

Joseph G. Donnellan, Esq.
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Appearance for Respondent:

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Springfield Retirement Board
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Administrative Magistrate:

Kenneth J. Forton

SUMMARY OF DECISION

A fire fighter assigned to clear the station driveway and sidewalk of snow and ice was “in the performance of his duties” when he slipped on ice while walking to his truck to get insulated gloves to spread sand and salt on the ice-covered ground. G.L. c. 32, § 7.

DECISION

Petitioner Lloyd Smith appeals from a decision of the Springfield Retirement Board denying the Fire Department’s involuntary application for accidental disability retirement benefits without referring the application to a medical panel because the Board

determined that Mr. Smith was not in the performance of his duties when he injured himself and therefore could not be retired as a matter of law. G.L. c. 32, § 7; 840 CMR 10.09(2).

On August 4, 2022, DALA ordered the parties to file pre-hearing memoranda and proposed exhibits. The board filed its pre-hearing memorandum on December 23, 2022, and the Petitioner filed his on March 1, 2023. DALA scheduled a hearing for October 25, 2023, but on October 19, 2023 the parties submitted a joint motion to establish a briefing schedule in lieu of the hearing and have the case decided on written submissions under 801 CMR 1.01(10)(c). I allowed the motion. On December 22, 2023, the Board filed its Memorandum. On December 28, 2023, the Petitioner filed his Memorandum and a personal affidavit.

After reviewing the parties' submissions, I determined that I could not make the necessary findings of fact without conducting an evidentiary hearing, which I scheduled for September 30, 2024. The hearing was conducted by Webex videoconference and was digitally recorded. I admitted into evidence eight exhibits marked P1-P2 and R1-R6. I have disregarded Mr. Smith's affidavit, as he testified and was cross-examined live at the hearing. The parties made oral closing arguments.

FINDINGS OF FACT

I make the following findings of fact:

1. Lloyd Smith was employed as a firefighter with the City of Springfield's fire department. Mr. Smith was assigned to Engine 5 in the Indian Orchard neighborhood. (Testimony.)

2. The station is a single-apparatus station housing only Engine 5. It is staffed by four crews of four firefighters each: one lieutenant and four fire fighters. The

crews work a schedule of 2 days on, 2 nights on, and then 4 days off. The day shift is 10 hours, from 7:00 a.m. to 5:00 p.m. and the night shift is 14 hours, from 5:00 p.m. to 7:00 a.m. (Testimony.)

3. At Engine 5, fire fighters show up at the station at 7:00 a.m. They begin the day shift by putting on their gear and inspecting the fire engine and their breathing apparatus. They usually spend the rest of their time, until 8:00 roll call, talking and drinking coffee. (Testimony.)

4. Roll call consisted of taking attendance, going over the day's work, and assigning "house chores." House chores included cleaning the kitchen and bathroom and the station garage. They also included "snow call," which required the fire fighters to clear the station driveway and adjacent sidewalks of snow and ice. (Ex. P2; Testimony.)

5. Sometimes house chores were assigned by the lieutenant, but usually the fire fighters would agree on which jobs they would do and the lieutenant would sign off on it. (Testimony.)

6. Mr. Smith injured himself on January 2, 2021. Early in the morning, the weather was mostly sleet, but the roads and sidewalks were covered in black ice and were consequently very slippery. (Testimony.)

7. That morning, he arrived for the day shift at 7:00 a.m., put on his gear and checked the fire engine and his breathing apparatus, then had coffee and waited for roll call, which occurred on time at 8:00. The house chores were divvied up. Mr. Smith volunteered for snow call. The lieutenant agreed with that assignment. (Testimony.)

8. The night shift was supposed to have performed snow call at 6:30 a.m., before the day shift reported to work, but that day the night shift had not performed that duty. (Testimony.)

9. Mr. Smith left the station to start snow call. That morning, there was little actual snow on the ground. It was mostly black ice and some sleet covering it. This meant that snow call would consist of spreading a mixture of salt and sand on the driveway and sidewalk. The sand and salt was kept in a bucket either inside the station door or just outside the door under the station's eaves. That day it was outside.

(Testimony.)

10. When Mr. Smith left the station, he walked toward his truck to retrieve a pair of insulated leather work gloves. He planned on using the gloves to spread sand and salt with his gloved hands. Mr. Smith liked to use his hands because he thought the sand and salt spread more evenly when he did it that way instead of using the scoop in the bucket. (Testimony.)

11. Springfield fire fighters are issued fire-fighting gloves, which, unsurprisingly, are meant to be used in fighting fires. Mr. Smith did not want to use his fire fighting gloves to spread sand and salt because those gloves could get crusty if they got wet in the sleet and he used his hands to spread the mixture around. (Testimony.)

12. On the short walk to his truck to get his gloves, Mr. Smith slipped and fell on the ice. He injured his neck and back. (Ex. P1.)

13. That day, around 10:00 a.m., Mr. Smith filed an injury report with the department. When asked to explain in detail how the injury was sustained, he responded: "This morning while walking in the parking lot of Station 15 Odessa I Pvt Lloyd Smith slipped on the ice falling and injuring my back and neck." (Ex. R3.)

14. Various subsequent reports list the details of his injury as "[f]ell at work on ice onto buttocks," "a fall at home," and "fell on ice." (Ex. R1.)

15. Mr. Smith was placed on injured-on-duty leave under G.L. c. 41, § 111F.

(Testimony.)

16. Mr. Smith had numerous doctor’s appointments for his injury and was treated with physical therapy and epidural steroid injections. (Ex. R2.)

17. On January 4, 2022, Mr. Smith underwent a Functional Capacity Evaluation. It determined that Mr. Smith was “not able to return to his normal job duties as a firefighter.” Mr. Smith did not return to work after the accident. (Ex. R2.)

18. On February 28, 2022, the fire department filed an involuntary retirement application, checking both the accidental and ordinary disability boxes. Mr. Smith did not oppose the filing of the application. (Ex. R1.)

19. On April 7, 2022, the board considered the application and voted to deny the accidental disability application on the basis that Mr. Smith could not retire as a matter of law because it determined that he was not in the performance of his duties when he injured himself, and to further proceed with the ordinary disability application. (Ex. R4.)

20. On April 21, 2022, Mr. Smith timely appealed the board’s denial of accidental disability retirement. (Ex. R6.)

21. Later, a regional medical panel affirmed that Mr. Smith was unable to perform his essential job duties and that the disability was likely to be permanent. The panel did not answer the causation question. The board approved Mr. Smith for ordinary disability retirement. Mr. Smith chose to waive ordinary disability retirement and opted to take superannuation retirement instead. (Exs. R4, R5.)

CONCLUSION AND ORDER

A public employee applying for accidental disability retirement must establish three elements: that the employee “is unable to perform the essential duties of his job”;

that the disability “is likely to be permanent”; and that the disability arose “by reason of a personal injury sustained . . . as a result of, and while in the performance of, [the employee’s] duties.” G.L. c. 32, § 7. There is no dispute that Mr. Smith is unable to perform the essential duties of his job and that the disability is likely to be permanent. He was already awarded ordinary disability retirement (which he waived in favor of superannuation retirement). The parties’ disagreement is whether his fall on January 2, 2021 occurred “as a result of, and while in the performance of, [Mr. Smith’s] duties.” G.L. c. 32, § 7.

The requirements of G.L. c. 32, § 7 are “conjunctive,” meaning the applicant must prove not only that his injury resulted from his duties, but also that it occurred “while in the performance of these duties.” *Boston Retirement Bd. v. Contributory Retirement Appeal Bd.*, 340 Mass. 109, 111 (1959). Accidental disability retirement is not available to an employee who is hurt—even during working hours—while performing a non-duty. *Namvar v. Contributory Retirement Appeal Bd.*, 422 Mass. 1004, 1005 (1996). The evident purpose of this “restrictive” language is to limit the very generous accidental disability retirement allowance, which is likely to last the rest of the retiree’s life, to circumstances where the job itself caused the employee’s permanently disabling injury. *Id.*

A set of relevant cases addresses whether employees traveling from one place to the other, as Mr. Smith was, are in the performance of their duties. These cases begin with *Boston Retirement Bd. v. Contributory Retirement Appeal Bd. (Palmeri)*, 340 Mass. 109, 109 (1959), where the Supreme Judicial Court ruled that it was too much of a stretch to conclude that a sanatorium nurse was in the performance of her duties when she tripped while descending a flight of stairs in the sanatorium on her way to lunch. *Id.* at

111. The Court concluded that an employee must be “actually engaged in the performance of her duties” to qualify for accidental disability retirement. *Id.* The Court applied the same rule in *Namvar*, where it similarly ruled that a college professor who, after eating lunch at the college cafeteria, slipped and fell while walking to her office to hold office hours for students, was not in the performance of her duties. 422 Mass. at 1005. The Court went on to say, however, that

[i]f the employee had been going from one place at which she had had an employment obligation to another such place, if she had had an employment duty at the cafeteria (as well as at her office), or if she had been performing a duty of her employment while walking to her office, the result would be different.

Id.

Mr. Smith’s argument is based on the Court’s hypothetical in *Namvar*. He argues that retrieving his gloves to be used in spreading sand and salt was part of his snow call duty and he was traveling from one duty—roll call—to another duty—snow call; therefore, he injured himself in the performance of his duties. The Board’s counterargument is less focused, but fundamentally it contends that getting gloves from a personal vehicle was an option or personal preference or detour, akin to going to lunch, and not a job duty. It further argues that he was not assigned snow duty, but rather somehow assigned it to himself, so he could not have been traveling from one duty to another.

A preponderance of the evidence supports Mr. Smith’s argument. He was assigned snow call by the lieutenant. How assignments are doled out in any workplace varies. At Engine 5, work was assigned to the morning shift at the daily 8:00 roll call, which Mr. Smith attended on the morning of January 2, 2021. Because there are only four fire fighters on the shift, work is informally assigned; the lieutenant essentially

rubber stamps the crew's choices who will do which morning duty. That morning, Mr. Smith volunteered for snow call and went about his duties after the lieutenant signed off. These facts support the conclusion that Mr. Smith was assigned snow call in the regular way that work was assigned at Engine 5. At the hearing, the Board argued that because the crew members volunteer for particular duties, that morning Mr. Smith assigned snow call to himself and that means that it was not his duty. I reject that characterization. The contributory retirement law requires only that Mr. Smith was performing fire fighter duties.

The next issue is whether getting his gloves was part of Mr. Smith's snow call duty. A list of Springfield fire fighters' duties directly states that clearing the driveway and sidewalk of snow and ice is a fire fighter duty. How snow call is executed varies depending on each day's weather. On the day in question, there was not much snow, but there was a considerable amount of dangerous black ice. That meant that snow call would be spreading a sand and salt mixture over the driveway and sidewalk. Mr. Smith credibly testified that his regular practice was to spread the mixture mostly by hand because it gave greater coverage than spreading it with a scoop. He went to retrieve his gloves to do that because he did not want to get his department-issued fire fighter gloves crusty with salt and he did not want to get his hands dirty and cold by doing it bare-handed.

The Board insists that getting the gloves could not be a job duty because they were his personal gloves in his personal vehicle. This is a red herring. The retirement law does not disqualify an accidental disability retirement claim because the employee was using personal equipment when he injured himself, so long as doing so did not constitute serious and willful misconduct. *See* G.L. c. 32, § 7(1).

Using his personal insulated work gloves may have been a personal choice or an option, but it was a sensible choice, and no different than an employee choosing to ascend several flights in a building by climbing stairs or taking an elevator, or choosing which tool to use to complete a task. The retirement law says nothing about how an employee executes his duties, again, as long as the injury is not sustained due to serious and willful misconduct on the employee's part. At the hearing, the Springfield Retirement Board confirmed that it is not accusing Mr. Smith of misconduct. A retirement board cannot deny accidental disability retirement because it thinks that there was a different or better way for the employee to complete his duties that the board speculates would not have resulted in the employee injuring himself.

For the above-stated reasons, the Board's decision is reversed. Mr. Smith was injured while in the performance of his job duties. Because the Board erroneously failed to obtain the medical panel's opinion on causation, a necessary step in the process of awarding accidental disability retirement, this case must be remanded to the medical panel for the limited purpose of its opinion on causation before the Board makes its final decision.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Kenneth J. Forton

Kenneth J. Forton
Administrative Magistrate

DATED: Oct. 4, 2024