COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Michael Smith,
Petitioner,

v.

Lowell Retirement Board,
Respondent.

Docket No.: CR-24-0540

Dated: April 3, 2026

Appearances:
For Petitioner: Leigh Panettiere, Esq.
For Respondent: Michael Sacco, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner is a police officer who suffers from disabling symptoms of posttraumatic stress disorder. During the two years immediately before the petitioner applied to retire for accidental disability, he underwent three traumatic incidents. A causal connection between those three incidents and the petitioner's disability is established by a preponderance of the evidence, including the opinions of every medical expert to have studied the case. The petitioner's disability does not arise from any "serious and willful misconduct" within the meaning of G.L. c. 32, § 7(1). He is entitled to retire for accidental disability.

DECISION

Petitioner Michael Smith appeals from a decision of the Lowell Retirement Board (board) denying his application to retire for accidental disability. I held a hearing on November 18, 2025, at which the witnesses were Mr. Smith and the former superintendent of the Lowell police department, William Taylor. I admitted into evidence stipulations marked 1-11. I now admit the exhibits discussed at the hearing, i.e., joint exhibits 1-37 and petitioner's exhibit 1.[1]

[1] Given the parties' divergent post-hearing requests with respect to exhibits 24, 28, 34, and 35, those exhibits will remain in the record unmodified.

Findings of Fact

I find the following facts.

1. Mr. Smith grew up in several Massachusetts towns. On one occasion during his adolescent years, he responded to a distressing interpersonal situation by cutting his own skin; he did not intend to cause himself life-threatening harm. He reported the incident to his parents and visited a therapist once with them. He was not diagnosed with a mental health issue and received no other treatment at that time. (Smith.)

2. In April 2004, Mr. Smith joined the United States Navy. He was originally slated to serve in elite positions. But early in basic training, Mr. Smith disclosed to a commanding officer that he had used LSD once and had experimented with marijuana on other occasions. Mr. Smith was reassigned to menial work. He became severely unhappy. Only weeks into his service, he absconded without leave for 29 days. When he returned, he was disciplined through a procedure known as a "captain's mast." (Smith; exhibits 23, 35.)

3. Soon after being disciplined, Mr. Smith told a colleague that he hated the service, was depressed, and was thinking about suicide. Mr. Smith was referred to a psychologist for an evaluation. According to his Navy records, he told the evaluator that he "hates his chain of command and will try to kill himself if they get underway [sic] again." He was diagnosed with "adjustment disorder with depressed mood," but found fit for duty. Nevertheless, after having served for only seven months, Mr. Smith was discharged. The discharge was classified as honorable. (Exhibits 14, 23.)

4. During the next nine years, from 2005 until 2014, Mr. Smith worked on ambulances as an EMT/paramedic. He responded to frequent medical emergencies, which sometimes involved suicide attempts and babies found unconscious or lifeless. (Smith.)

5. In 2013, Mr. Smith applied for a position with the Lowell police department. While the application was pending, Mr. Smith successfully obtained a copy of his military file from the Navy. A preponderance of the evidence supports the conclusion that he did so at the request of a Lowell police officer involved in the application process and delivered a copy of the file to that officer. (Exhibits 1, 35.)

6. As part of the police department's screening process, Officer Smith completed detailed questionnaires about his personal, professional, and medical histories. Copies of his questionnaires have not been retained by the police department. They also have not been retained by Dr. John Madonna, who performed a psychological evaluation on the department's behalf.[2] (Exhibit 11.)

7. Dr. Madonna interviewed Mr. Smith in April 2014. According to Dr. Madonna's subsequent report, he was aware of Mr. Smith's years of work as an EMT/paramedic. He was also aware of Mr. Smith's seven months of service in the Navy, including his month-long abscondment and the resulting disciplinary procedure. Dr. Madonna could only have learned these pieces of information either from Mr. Smith himself or from his Navy file. Dr. Madonna's

[2] Dr. Madonna sat for a voluntary deposition with the parties while this appeal was pending. *Cf.* 801 C.M.R. § 1.01(8)(c) (prescribing the conditions on which the tribunal may "order" depositions to be taken).

report does not reveal any probing discussion of Mr. Smith's times either in the Navy or on ambulances. (Exhibit 11.)

8. A preponderance of the evidence supports the conclusion that Dr. Madonna and Mr. Smith did not discuss Mr. Smith's adolescent cutting incident or his talk of suicide with Navy personnel. It is fair to assume that these topics would have been mentioned in Dr. Madonna's report if they had come up. That said, there is no basis in the record for an inference that Mr. Smith gave false or misleading answers to any of Dr. Madonna's questions. (Smith; exhibit 11.)

9. The police department's hiring criteria around that time were unwritten and mostly flexible. An applicant with a felony conviction would be disqualified automatically. Former Superintendent Taylor would have vetoed any applicant with a history of a suicide attempt. But with respect to applicants with histories of more moderate mental-health incidents or short-term drug use, the department would consider candidacies case by case, relying heavily on input from the evaluating medical professionals. (Taylor.)

10. Mr. Smith successfully passed Dr. Madonna's evaluation and the rest of the department's hiring process. He began to work as an officer in June 2014. (Smith; stipulation 1.)

11. Mr. Smith's duties required him to contend with tragedies and violent injuries. In June 2016, he and his partner arrived at the scene of a shooting to find a victim conscious but struggling to breathe. The victim died while Mr. Smith was performing CPR. In May 2017, Mr. Smith responded to the scene of a suicide victim whose skull and face were severely disfigured by a gunshot wound. Mr. Smith remained with the body for several hours while the area was being processed. (Smith.)

12. By March 2018, Mr. Smith was suffering from anxiety, depression, and a drinking problem. He spoke to a representative of his employee assistance program, who referred him to the LEADER program at McLean Hospital. After completing that program, Mr. Smith was able to stop drinking. He felt better and became more active in family activities and physical fitness. He returned to work without feeling dread. (Smith; exhibit 24.)

13. In September 2018, Mr. Smith responded to the scene of another suicide, finding a suicide note and the victim holding a shotgun. In December of the same year, at another suicide, the victim had slit his wrists with a box cutter. The home was flooded with blood. (Smith; exhibit 15.)

14. On August 27, 2022, Mr. Smith was assigned to perform a welfare check on a man who had been missing from work. The officers could smell a decomposing body from outside the apartment. Inside, the apartment was buzzing with flies. Maggots were visibly crawling inside the dead body. (Smith; exhibits 15, 20.)

15. On July 9, 2023, the police department conducted a search for a missing seven-year-old girl. Mr. Smith's assignments included blocking off nearby streets, visiting the girl's school, and later positioning himself outside her home. From the latter location, Mr. Smith heard the sobbing and wailing of the girl's parents when they were notified that she had been found dead. (Smith; exhibit 15.)

16. On August 7, 2023, Officer Smith responded to the scene of a drug overdose. The home was squalid, with drug paraphernalia strewn around. The victim was lying face down by the toilet with his pants around his ankles. Firefighters were crying outside the home; one of them was related to the victim. (Smith; exhibits 15, 31-33.)

17. After the incidents of July and August 2023, Mr. Smith began to experience anxiety attacks whenever calls came in over his radio. He struggled to perform his job duties. He was severely depressed. He reported his condition to his supervisors, who referred him to treatment and placed him on leave. His last day of work was August 19, 2023. (Smith; exhibits 16, 24; stipulation 6.)

18. In December 2023, Mr. Smith applied to retire for accidental disability, describing his diagnosis as post-traumatic stress disorder (PTSD). A regional medical panel consisting of psychiatrists Dr. Michael Braverman, Dr. Melvyn Lurie, and Dr. Peter Cohen convened to evaluate the application. (Exhibits 16, 19-22.)

19. The panelists conducted separate examinations of Mr. Smith during June 2024. They described his symptoms as including traumatic memories, flashbacks, nightmares, phobic avoidance, palpitations, and shortness of breath. The panelists' diagnoses included PTSD, anxiety, and depression. They all certified that Mr. Smith is incapacitated, that the incapacity is permanent, and that the incapacity is such as might be the result of Mr. Smith's claimed workplace injuries. (Exhibits 19-21.)

20. Specifically with respect to causation, Dr. Braverman attributed Mr. Smith's symptoms to "the severity of the traumatic events he experienced as a police officer, particularly the stressful events of 2022 and 2023." Dr. Braverman explained: "[H]is PTSD significantly worsened following the incidents of [July-August 2023]. These events, in and of themselves, were sufficient to trigger this incapacitating PTSD, but they also aggravated the signs and symptoms of PTSD from the previous stressful events at work as well as the stressful events he experienced working as a paramedic/EMT." (Exhibit 19.)

21. Dr. Lurie wrote, on causation:

> The member has witnessed several horrific events at work that qualify for the diagnosis of PTSD. This includes the ones of [2022-2023] . . . . The events of [July-August 2023] were not triggers. . . . [They] were traumatic events in and of themselves. . . . While the events of [2022-2023] aggravated any underlying PTSD that might have not fully resolved, each of them alone was enough to cause PTSD.

With respect to Mr. Smith's time in the Navy, Dr. Lurie wrote: "His pre-existing supposed PTSD from the military had not affected his work or [made] him more susceptible to PTSD from work-related events." As for Mr. Smith's "possible cutting when he was a youth," Dr. Lurie stated similarly: "[H]e functioned satisfactorily at work since [that] occurred and . . . [the cutting incident did] not relate specifically to work." Dr. Lurie concluded: "It is more likely than not that the disability was caused by the . . . event[s] described [by Mr. Smith]." (Exhibit 20.)

22. Dr. Cohen's certificate was briefer than those of his co-panelists but consistent with their analyses. He wrote: "[The disability] is causally related to the sequence of traumatic events that [Mr. Smith] experienced prior to 2022, but also directly related to the incidents of August 27, 2022; July 9, 2023; and August 7, 2023, which aggravated the PTSD from the previous events." (Exhibit 21.)

23. In August 2024, the board retired Mr. Smith for ordinary disability, declining to retire him for accidental disability. Mr. Smith timely appealed. (Stipulations 8-10.)

Analysis

An applicant for accidental disability retirement must prove that he became permanently incapacitated "by reason of a personal injury . . . or a hazard undergone as a result of, and while in the performance of, the member's duties." G.L. c. 32, § 7(1). The board

properly concedes that Mr. Smith is permanently incapacitated, as reflected in its award of ordinary disability retirement. *See id.* § 6(1).

With inapplicable exceptions, a disabling "injury" satisfies the governing statute only if it occurred "within 2 years prior to the filing of [the retirement] application." § 7(1). The three accidents identified by Mr. Smith as occurring during his two-year pre-application window are those of August 2022, July 2023, and August 2023. The parties disagree over whether Mr. Smith's incapacity is the result of those particular incidents.

Determinations about matters that exceed common knowledge and experience must be guided by input from experts. *See Robinson v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 634, 639 (1985). More specifically, psychologists and psychiatrists are better situated than laypersons to identify the life events that are likely to have prompted disabling PTSD symptoms. *See Bowman v. Heller*, 420 Mass. 517, 521 (1995). Mr. Smith's panelists provided clearcut opinions in favor of his position. The panelists did not restrict themselves to the narrow statutory question of whether Mr. Smith's incapacity is "such as might be" the result of his three final traumas. *See Narducci v. Contributory Ret. Appeal Bd.*, 68 Mass. App. Ct. 127, 134-35, 144 (2007). They opined instead that the requisite causal connection is actually present, either by force of the three pertinent incidents standing alone or through their aggravation of earlier damage to Mr. Smith's mental health. *See Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501 (1958). The salient portions of the panelists' opinions are quoted earlier.

The board theorizes that Mr. Smith's incapacity results instead from pre-2022 events, either during Mr. Smith's time with the police or earlier. But not a single physician has written or spoken in support of this theory. The board's elaborate lay analysis does not outweigh the

opinions of the competent experts. *See Robinson*, 20 Mass. App. Ct. at 639. *See generally Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973).

Retirement for accidental disability is available only where the member's disability was "undergone . . . without serious and willful misconduct on the member's part." G.L. c. 32, § 7(1). The board maintains that Mr. Smith is disqualified by this rule. "Serious and willful misconduct" in this context means "the intentional doing of something either with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of its probable consequences." *Jones v. Weymouth Ret. Bd.*, No. CR-04-181, at *6 (Contributory Ret. App. Bd. Sept. 30, 2005). "The action taken must be [a] deliberate and knowing disregard of serious danger." *Loura v. Taunton Ret. Bd.*, No. CR-13-186, 2021 WL 12297908, at *20 (Contributory Ret. App. Bd. July 14, 2021).

It is more likely than not that Mr. Smith committed no serious and willful misconduct within the meaning of the governing precedents. He made his Navy file available to the police department. He informed his evaluators about his monthlong abscondment, the resulting disciplinary process, and his premature departure from the service. It is possible that Mr. Smith did not go out of his way to volunteer additional pertinent information; but there is no basis for a conclusion that he acted in "deliberate and knowing disregard of serious danger." *Loura*, *supra*, at *20.

There also was no connection between the behavior alleged by the board and Mr. Smith's eventual disability. *See Internicola v. Saugus Ret. Bd.*, CR-20-385, 2022 WL 17081140 (Div. Admin. Law App. Nov. 10, 2022). The board relies on *Kallas v. Quincy Ret. Bd.*, No. CR-00-1165 (Contributory Ret. App. Bd. Jan. 18, 2002), where the member lied about very recent back

pain, secured a job centered around heavy labor, and injured his spine only days later. By contrast, the events about which Mr. Smith may have been too guarded occurred approximately twenty years before his disabling traumas. Those long-ago events, as Dr. Lurie said without contradiction, did "not . . . [make Mr. Smith] more susceptible to PTSD from work-related events." In this set of circumstances, Mr. Smith's preemployment conduct cannot be said to have been "likely to result in serious injury"; it entailed no "probable consequences" that Mr. Smith wantonly and recklessly disregarded. *Jones*, *supra*, at *6. *See Internicola*, 2022 WL 17081140, at *4. *See also Baptiste v. Bristol Cty. Ret. Bd.*, No. CR-20-1, 2024 WL 215931, at *7-8 (Div. Admin. Law App. Jan. 12, 2024); *Underwood v. Boston Ret. Bd.*, No. CR-21-0353, 2024 WL 4582630, at *10 (Div. Admin. Law App. July 26, 2024). *Cf. Carrier v. Fall River Ret. Bd.*, No. CR-18-0274 (Div. Admin. Law App. July 24, 2020); *Beamud v. Cambridge Ret. Bd.*, No. CR-09-355 (Div. Admin. Law App. June 21, 2013).[3]

Conclusion and Order

Mr. Smith is entitled to retire for accidental disability. The board's contrary decision is REVERSED.

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
Division of Administrative Law Appeals

[3] The remaining points made in the board's voluminous brief do not require further discussion. As one exception, the brief suggests that some or all of the pertinent workplace incidents were insufficiently stressful or traumatic from an objective perspective to support retirement for accidental disability. The argument is a nonstarter under settled precedents. *See Fender v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 755, 763-64 (2008); *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 485 n.4 (1985). *See also Steinberg v. State Bd. of Ret.*, No. CR-08-171 (Contributory Ret. App. Bd. Mar. 3, 2011); *Foster v. Boston Ret. Bd.*, No. CR-24-32, 2025 WL 2021566, at *3-4 (Div. Admin. Law App. July 11, 2025).