

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Joanne Songy,
Petitioner

v.

Docket Nos. CR-23-0027 and CR-24-0015

**State Board of Retirement and
Worcester Regional Retirement System,**
Respondents

Appearance for Petitioner:

Allison K. Gurley, Esq.

Appearance for Respondent State Board:

John Durgin, Esq.

Appearance for Respondent Worcester Regional:

Linda Champion, Esq.

Administrative Magistrate:

James P. Rooney

Summary of Decision

Widow of a police officer who died from Covid-19 sought benefits under three statutes: (1) M.G.L. c. 32, § 9 (for an accidental death in the performance of a duty); (2) M.G.L. c. 32, § 100 (for police officers killed in the line duty); and (3) M.G.L. c. 32, § 100A (for police officers killed at the scene of an emergency). She has shown by a preponderance of the evidence that her husband caught the disease while performing his duties, and thus she is eligible for Section 9 and 100A benefits. She did not present sufficient evidence to show that he acquired the disease at the scene of an emergency, and thus the decision denying her a Section 100 benefit is affirmed.

DECISION

Joanne Songy, the widow of Detective John Songy, who died of Covid-19, appeals from (1) the December 30, 2022 decision of the State Board of Retirement denying her death benefits under the killed-in-the-line-of-duty provision of M.G.L. c. 32, § 100A (Docket No. CR-23-0027) and (2) the December 19, 2023 decision of the Worcester Regional Retirement Board denying her claim for benefits under M.G.L. c. 32, §§ 100 (police officer killed in the line of duty) and 9 (accidental death) (Docket No. CR-24-0015).

I consolidated the two appeals and held a hearing December 19, 2024 at the Division of Administrative Law Appeals. I marked the joint prehearing memo filed by the parties in Docket No. CR-23-0027 as Pleading A and accepted 13 exhibits offered by the parties into evidence, to which I added the Boards's denial letter and Mrs. Songy's appeal. I marked the joint prehearing memo filed by the parties in Docket No. CR-24-0015 as Pleading B and accepted the 22 exhibits offered by the parties into evidence, to which I added the Retirement System's denial, Mrs. Songy's appeal, and a January 31, 2023 Retirement System letter. Mrs. Songy was the only witness. The parties made oral closing arguments at the conclusion of the hearing, thereby closing the record.

Findings of Fact

Based on the testimony and exhibits presented at the hearing, the stipulations in the joint memoranda, and reasonable inferences from them, I make the following findings of fact:

1. Detective John Songy served with the Rutland Police Department for 14 years and worked previously with the Oakham Police Department. He was a member of the Worcester Regional Retirement System. Joanne Songy is his widow. (Pleading A and B, stipulations 1 and 3.)
2. On March 23, 2020, Governor Charles Baker issued Covid-19 Order No. 13 that “assured continued operation of essential services in the Commonwealth, closed certain workplaces, prohibited gatherings of more than 10 people” and urged all residents to limit activities outside of the home and to practice social distancing because of the Covid pandemic that was causing cases to “rise exponentially in the Commonwealth.” (2023 and 2024 Ex. 8, Pleadings A and B, stipulations 7.)
3. This stay-at-home order did not apply to public servants, like Det. Songy, who provided essential services. Because they were required to work in person, frontline workers like police officers were susceptible to workplace outbreaks and placed them at higher risk of work-related exposure to Covid-19 due to their inability to adequately distance themselves from others. (2023 and 2024 Ex. 8, Pleading A and B, stipulation 8; Pleading B, stipulation 9.)
4. According to the Center for Disease Control, “people with Covid-19 have had a wide range of symptoms, ranging from mild symptoms to severe illness with symptoms appearing 1 – 14 days after exposure to the virus.” (Pleading A, stipulations 10.)

5. When the Governor's order was issued, the Songys limited their exposure to other people. They stopped going to church, went to no social events, did not have anyone over to their house, and did not take any public transportation. (Songy testimony.)

6. Mrs. Songy is an MMQ¹ nurse who handles the paperwork for Medicaid reimbursements. In early 2020, she worked for two facilities. Quabbin Valley Health required her to work from home starting April 4, 2020. During March and April 2020, she worked for The Meadows Rehabilitation Center once or twice per week for five hours in the afternoon. She used an entrance that allowed her to walk immediately upstairs to her office. She worked alone in the office and wore an N95 mask at all times. She worked only one shift at the Meadows in the two weeks before her husband was diagnosed with Covid-19. Although by May 2020 the facility had more than 30 confirmed Covid-19 cases and 11 deaths, she did not have any contact with patients or employees of the facility during that time. (Songy testimony; 2023 and 2024 Ex. 3, 2024 Exs. 17, 21, and 22.)

7. The Songys shared their home during this time with her son and her sister. Mrs. Songy's sister provided home care to elderly clients. She caught Covid-19 after Det. and Mrs. Songy caught the disease. She checked with her clients after Det. Songy became ill and learned that none of them had caught Covid. Mrs. Songy's son was a postal worker. He did not catch Covid-19 during the period when the Songys were ill from Covid-19. Mrs. Songy's home office was on

¹ MMQ stands for Managed Minutes Questionnaire. (2024 Ex. 22.)

the second floor; her sister stayed on the first floor. Her son had a separate bathroom. (Songy testimony.)

8. Det. Songy continued to work full-time, unmasked after the issuance of the Governor's stay-at-home order.² He did not go out except to go to work, and he came home directly after he finished his shifts. (Songy testimony.)

9. Det. Songy's duty logs show that from April 1, 2020 onward most of his work involved community policing. On April 6, he spent 36 minutes at an illegal burn along with members of the fire department. On April 8, he and two other officers responded to a domestic disturbance. The detective spent 54 minutes in a home with the other officers and the two people in the house. After interviewing the suspect, Det. Songy arrested him and took him to the police station to be processed. On April 9, Det. Songy delivered evidence to the Worcester and Sudbury crime labs and had contact with personnel in both places. He spent 2 hours and 7 minutes on this task. On April 12, Det. Songy spent 43 minutes at the Rutland Department of Public Works. On April 15, he responded to a mental health call. He was there for 5 minutes with two other officers, the person with the mental health crisis, and an EMS ambulance and a fire truck. On April 18, he stopped a car to have the driver remove snow off the vehicle. He spent 28 minutes at the scene. On April 19, he responded to a car that had crashed into a tree, injuring the driver. He spent an hour at the scene with the driver, emergency personnel from an ambulance service, firefighters,

² The governor did not issue a partial mask mandate until May 1, 2020. <https://www.lowellma.gov/AgendaCenter/ViewFile/Item/12429?fileID=25639> (last accessed March 27, 2025).

and a tow truck operator. He then spent an hour at an auto body shop that reported a car theft. He interviewed the owner, and they looked at security camera footage together. (2023 and 2024 Exs. 3 and 9.)

10. Around April 18 or 19, 2020, Det. Songy began experiencing what Mrs. Songy thought at the time were seasonal allergy symptoms, such as burning eyes, sore throat, and sneezing. He then developed increased fatigue, a cough, and headaches. Mrs. Songy saw him sleeping in a reclining chair, which was not how he usually acted when he had seasonal allergies. (Songy testimony.)

11. On April 22, 2020, Mrs. Songy experienced body aches and headaches. She was tested for Covid-19 and the following day she learned she had the disease. She called her husband at the police station. He immediately tested and learned that he had Covid-19 as well. After that, they both stayed home and took care of each other. On May 1, 2020, Det. Songy contacted his primary care physician, Alan Jackson, M.D., and told him that he still felt unwell. He reported that he had a dry cough, shortness of breath, frontal headaches, diarrhea, nausea and a sore throat. Mrs. Songy recovered by May 2, 2020. (Songy testimony, 2024 Ex. 20.³)

12. Det. Songy went by ambulance to Saint Vincent Hospital on May 2, 2002, after he felt out of breath while taking a shower. When Det. Songy arrived at the ER Department, he reported that he had a dry cough and shortness of breath since he was diagnosed, as well as an intermittent

³ Mrs. Songy testified that her husband learned his Covid-19 test results the same day that she learned she had Covid. The records of Det. Songy's primary care physician list the date of the detective's positive test as April 24, 2020. (Songy testimony, 2024 Ex. 20.) Whether the detective learned that he had Covid-19 on April 23 or April 24 has no bearing on this decision.

fever. The ER Department noted that he had a history of diabetes and was overweight. Because he was hypoxic, with low levels of oxygen reaching his tissues, he was placed on high flow oxygen via a nasal cannula and admitted to the Intensive Care Unit. (2023 and 2024 Ex. 10, Pleading A, stipulation 13; Pleading B, stipulation 17.)

13. While hospitalized, Det. Songy suffered acute hypoxic respiratory failure secondary to Covid-19 pneumonia, acute renal failure requiring dialysis, pneumothorax with chest tube in his left lung, metabolic acidosis, respiratory acidosis, cardiovascular shock and sepsis due to Covid-19 infection, hypervolemia, bradycardia, shock liver and anuric acute kidney injury. He remained intubated in a medically induced coma on a ventilator. He was treated aggressively with multiple medications including remdesivir and blood transfusion. He died on May 29, 2020. His death certificate listed the causes of his death as acute cardiopulmonary arrest, acute hypoxic respiratory failure, and Covid-19. (2023 and 2024 Ex. 7 and 10, Pleadings A and B, stipulation 1; Pleading A, stipulation 14, Pleading B, stipulation 18.)

14. More than 700 police officers nationwide died from Covid-19 in 2020 and 2021, including seven Massachusetts police officers. In 2020, the majority of law enforcement deaths were from Covid-19. Officers who died from Covid-19 were more likely to be white males 50 or older who had 10 or more years of experience as police officers. (2023 and 2024 Ex. 13, Pleading B, stipulations 10 and 12, Songy testimony.)

15. While her husband was hospitalized, Mrs. Songy attempted to reach out to Covid-19 survivors to have them donate blood that might have Covid-19 antibodies that would help her husband resist the disease once he received a transfusion of such blood. (Songy testimony.) A

Boston Globe article from May 7, 2020 titled “Leicester woman calls for recovered coronavirus patients to donate blood” described her effort. (2024 Ex. 14.) In the article, the reporter stated that Mrs. Songy had “reached out to Facebook Sunday to anybody who might be able to donate plasma containing antibodies to fight the coronavirus” As background, the article declared that Mrs. Songy “became violently ill in mid-April after contracting the virus. John took care of her. But a day after Joanne officially tested positive for the virus in late April, so did John.” *Id.* Mrs. Songy had asked to review the article before it was published but was not given the opportunity. She denied being ill in mid-April before her husband caught Covid-19 and denied ever being violently ill with Covid-19. (Songy testimony.)

16. On July 16, 2020, Mrs. Songy filed a claim with the State Board of Retirement for killed-in-the-line-of-duty benefits under M.G.L. c. 32, § 100A. On December 30, 2022, the State Board notified her that it had denied her application because there was no evidence showing that Det. Songy was “in the performance of his duties” and suffered an accident and was “killed or sustained injuries which were the direct and proximate cause of his (unfortunate) death.” Mrs. Songy appealed this decision. (2023 Ex. 1, 14, and 15, Pleading A, stipulations 18, 20, and 21.)

17. On December 27, 2022, Mrs. Songy filed a claim with the Worcester Regional Retirement System for death benefits under M.G.L. c. 32, § 9. The following day, she filed a claim for killed-in-the-line-of-duty benefits under M.G.L. c. 32, § 100.⁴ On December 19, 2023, the Retirement System denied her claims for benefits on the grounds that Mrs. Songy failed to

⁴ In June 2020, the Worcester Regional Retirement System granted Mrs. Songy a member survivor allowance under M.G.L. c. 32, § 12(2)(d). (2024 Exs. 1 and 25.)

demonstrate that Det. Songy contracted Covid-19 while in the performance of his duties. It noted that there is no presumption that an officer who died from Covid-19 would be presumed to have died in the performance of his duties. Mrs. Songy filed a timely appeal. (2024 Ex. 1, 23, and 24, Pleading B, stipulations 36 and 37.)

18. On April 11, 2023, Todd Ellerin, M.D., a board-certified infectious disease doctor and the director of Infectious Disease and Chief of Medicine at South Shore Health, wrote a letter to Mrs. Songy’s attorney addressing whether Det. Songy contracted Covid-19 in the line of duty. He stated that he served as his “hospital’s lead epidemiologist and am familiar with the SARS – CoV2 (the virus that causes COVID-19), its epidemiology, how it is spread, its incubation period and I am qualified to opine regarding the cause of relationship between John Songy’s occupation as a front line detective for the Rutland Police Department and how his high risk exposures in the line of duty led to his acquiring COVID-19 illness.” (2023 and 2024 Ex. 3.)

19. According to Dr. Ellerin, Covid-19 “can be transmitted or patients who are symptomatic as well as patients who are pre-symptomatic, meaning they have no symptoms at the time of exposure, but develop symptoms in a day or two” and that the incubation period for the disease is around fourteen days. *Id.* He thus examined whether any members of the Songy household had contact with individuals who could have transmitted Covid-19 within the fourteen days before Det. Songy was diagnosed. Dr. Ellerin noted that Mrs. Songy worked only one shift at the Meadows in the two weeks before Det. Songy was diagnosed and wore a mask while there, worked alone in an office, and had no contact with patients or staff. He also noted that “no other

family member had a confirmed COVID-19 case or had contacts with a confirmed COVID-19 case during this period.” On the other hand, Det. Songy’s:

day to day work involved patrolling the streets of Rutland, talking with and interacting with residents. Review of his duty log for April 1, 2020 to April 23, 2020 reveals numerous contacts with the public during traffic stops, motor vehicle accidents, investigation and patrols of dozens of locations, indoors and outside, all of which involved contact with the public. Throughout his shifts he patrolled multiple schools, offices, public facilities, and private businesses. Within the two weeks prior to his COVID-19 diagnosis, Det. Songy had multiple extended contacts with the public including responding to a motor vehicle accident, investigating a motor vehicle theft, an erratic operator (John spoke to the reporting party in-person), assisting a neighborhood department with a call (John road in a cruiser with another officer and shook hands with another officer) and a traffic stop. On April 20, John was sent to Leominster emergency management office to pick up a supply of KN95 masks.

Id.

20. Dr. Ellerin concluded “to a reasonable degree of medical certainty that it is more likely than not that Det. Songy was exposed to COVID-19 while on duty.” He opined that the risk of contracting Covid-19 is greater the longer a person comes in contact with an infected person. He explained that “spending 15 minutes or more with a person who has COVID-19 has a higher risk of contracting infection. Other risks include contact in smaller spaces, with more people in an area, or indoors (although the disease can be contracted with outdoor exposure.)” He also relied on a Journal of the American Medical Association study that showed that first responders, including police officers, had caught Covid-19 at twice the rate of healthcare workers and other essential workers. He observed that Covid can be contracted from people experiencing Covid-19 symptoms but also from people who have caught Covid-19, but are not symptomatic as yet. *Id.*

Regarding the likelihood the Det. Songy caught Covid-19 while working, he stated:

The incubation period for COVID-19 is generally 14 days following exposure, with most cases occurring 4-5 days after exposure. While we often can't pinpoint the exact timing of exposure, we can evaluate an individual's activities during the relevant incubation period, risk stratify these activities, and determine whether the high risk activities were more likely than not to lead to COVID-19 infection. Exposure to COVID-19 that led to the death of Detective Songy, likely occurred while working full time with the public as a police officer. Detective Songy likely encountered individuals infected with COVID-19 multiple times in the two weeks before he developed symptoms. A person staying at home with the shelter in place order has significantly less exposures. A review of the timeline of Detective Songy's activities before contracting the virus, leads me to the conclusion that it is more likely than not that he encountered the virus while on duty.

Id.

Discussion

The three retirement benefits Mrs. Songy is seeking have in common that the member must die in the performance of his duties.

A beneficiary is eligible to receive an accidental death benefit under Section 9 when a:

member in service died as the natural and proximate result of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties.

M.G.L. c. 32, § 9.

A surviving spouse of a police officer killed in the line of duty is eligible to receive a Section 100 benefit if the:

police officer while in the performance of his duties and as the result of an assault on his person or as a result of an accident involving a police department vehicle which he is operating or in which he is riding in the performance of his duties as a police officer is killed or sustains injuries which result in his death, or if a police officer while at the scene of an emergency in the performance of the police officer's duties is killed or sustains injuries which result in the police officer's death.

M.G.L. c. 32, § 100.

The family of a police officer killed in the line of duty is eligible to receive a Section 100A benefit which is :

a 1–time payment of \$300,000 to the family of a deceased public safety employee who, while in the performance of his duties and as a result of incident, accident or violence, was killed or sustained injuries which were the direct and proximate cause of his death.

M.G. L. c. 32, § 100A(c). This last benefit is administered by the State Board of Retirement and is made in addition to any payments under Section 100. M.G.L. c. 32, § 100A(b) and (d).

These three provisions have some particular requirements as well. The latter two require that the member who died was a police officer, which is met because Mr. Songy was a police detective. Section 9 requires that the member’s death was caused by an injury or a hazard undergone on the job. Section 100A requires that the cause of death be “as a result of incident, accident or violence.” The Contributory Retirement Appeal Board has held that the requirements of Section 100A are more restrictive than the requirements for Section 9. *Collins v State Bd. of Ret.*, Docket No. CR-14-246, Decision at 7 (Contributory Ret. App. Bd., Nov. 18, 2021.) In a case concerning the death of a police officer who contracted polio while giving mouth-to-mouth resuscitation to a girl who had polio, the Contributory Retirement Appeal Board held that the officer’s infection was an “injury” to him and that his act of giving mouth-to-mouth resuscitation was an “incident.” *Id.* at 4-5.⁵ Thus, Det. Songy’s Covid-19 infection was an injury for purposes of Section 9 and was an incident for purposes of Section 100A, so long as in both cases the detective was infected while in the performance of his duties.

⁵ The State Board of Retirement in *Collins* had granted Section 9 benefits to Officer’s Collins widow. *Id.* at 3.

Section 100 benefits are limited to very particular circumstances. Mrs. Songy claims this benefit because her late husband died “while at the scene of an emergency in the performance of the police officer’s duties.” I will examine this claim after discussing whether the evidence shows that Det. Songy died because of an infection that he acquired in the performance of his duties.

The parties agree that determining the source of Covid-19 infection during a pandemic can be difficult. They have pointed out that a bill is pending in the legislature that would create a presumption that police officers who worked during the State of Emergency declared by Governor Baker and who caught Covid during that time caught the disease while working. Bill H. 2770. A similar federal presumption allowed Mrs. Songy to receive federal killed-in-the-line-of-duty death benefits for the death of her husband. (Songy testimony; Pleading A, stipulation 16, Pleading B, stipulation 24.)

Although difficult, it is not necessary for an applicant seeking a death benefit to have the benefit of a presumption to prevail. Mrs. Songy has the burden to demonstrate by a preponderance of the evidence that her husband caught Covid-19 while performing his duties as a policeman. *See Smith v Gloucester Retirement Bd. and PERAC*, CR-13-249, Decision at 36 (Div. of Admin. Law App., Oct. 24, 2018) (in death benefit case, petitioner has the burden of proof as to every element needed to show eligibility for the benefit). What this means is that she must show that it is more likely than not that Det. Songy caught Covid-19 while working rather than off-duty. *See Scipione v. Barnstable County Retirement Bd.*, CR-12-196, Decision at 31 (Div. of Admin. Law App., Sept. 4, 2015).

Dr. Ellerin's report supports the conclusion that Det. Songy was likely exposed to many people with Covid-19 in the two weeks before he was diagnosed with Covid. He had multiple encounters with people for more than 15 minutes, which the doctor stated makes it more likely that one will catch Covid-19. He also had extended contact with people in indoor spaces, such as the instance in which he spent nearly an hour in a house on a domestic dispute call and an hour in a body shop going over security camera footage.

There is no dispute that the detective could have caught Covid-19 while working. Rather, the dispute is about the level of certainty that this was what happened. The evidence shows that it was unlikely that he caught Covid-19 while off-duty. Mrs. Songy testified that, once the governor declared a state of emergency, Det. Songy drove home immediately after his shift was finished and that both of them stayed home and had no guests. Finding 5. That leaves only the question of whether Det. Songy could have caught Covid-19 from his wife, her sister or her son, all of whom were household members.

Dr. Ellerin discounted the possibility that Det. Songy caught Covid-19 from his wife because, while she worked part-time at the Meadows Rehabilitation Center, which had a Covid-19 outbreak, she went there only once in the two weeks before Det. Songy was diagnosed and worked masked and alone in an office with no contact with staff or patients. Finding 19.

Dr. Ellerin also observed that "no other family member had a confirmed COVID-19 case or had contacts with a confirmed COVID-19 case during this period." Mrs. Songy's sister and her son were essential workers who left the Songys' house to work. Mrs. Songy's sister tended to elderly clients in their homes. Her son was a postal carrier. According to Dr. Ellerin, Covid-19

can be communicated by a person with Covid-19, whether they have symptoms or not. This leaves out the son as a source of the disease because he never came down with Covid-19. Mrs. Songy's sister did develop Covid, but only after Det. and Mrs. Songy had Covid-19. She checked with her elderly clients and learned that none of them had Covid. Thus, it is far more likely that Mrs. Songy's sister caught Covid-19 from either Det. Songy or Mrs. Songy than that she gave Covid-19 to Det. Songy. Findings 7 and 19.

The question remains whether Det. Songy caught Covid-19 from his wife. Mrs. Songy tested positive for Covid-19 before Det. Songy, but that is not the important question. Rather, it is which one of them caught Covid-19 first. Ms. Songy tested on April 22, 2020 after she experienced body aches that day. Det. Songy was already ill by that date. On April 18 or 19, 2020, he began experiencing some symptoms that were usual seasonal allergy symptoms for him, such as burning eyes, sore throat, and sneezing. But he had other symptoms as well including fatigue, a cough, and headaches. The level of fatigue that made Det. Songy fall asleep in a reclining chair was something Mrs. Songy noticed because it was not a symptom he had experienced before with seasonal allergies. The cough remained a significant symptom when he was diagnosed with Covid-19. Thus, the sequence of events suggests that Det. Songy caught Covid-19 first, and his wife caught it from him. Findings 10 and 11.

Mrs. Songy also presented the affidavit of Dr. Ellerin, the infectious disease expert, who compared the likelihood that Det. Songy caught Covid-19 while working unmasked with the public against the risk that his wife caught it when she worked outside their home. In the two weeks prior to when the Songys tested positive for Covid-19, the time period when the infection

most likely occurred, Dr. Ellerin opined that Mrs. Songy's risk of acquiring Covid-19 was low because she "worked only one shift at the Meadows . . . and wore a mask while there, worked alone in an office, and had no contact with patients or staff." (Finding 19.) On the other hand, Dr. Ellerin found that Det. Songy's risk was high because he had "multiple extended contacts with the public including responding to a motor vehicle accident, investigating a motor vehicle theft, an erratic operator (John spoke to the reporting party in-person), assisting a neighborhood department with a call (John rode in a cruiser with another officer and shook hands with another officer) and a traffic stop. On April 20, John was sent to Leominster emergency management office to pick up a supply of KN95 masks." *Id.* He added that "Detective Songy likely encountered individuals infected with COVID-19 multiple times in the two weeks before he developed symptoms." Thus, the drastic difference in exposure of Det. Songy and Mrs. Songy and the detective's likely encounter with multiple people with Covid-19, led Dr. Ellerin to conclude "to a reasonable degree of medical certainty that it is more likely than not that Det. Songy was exposed to COVID-19 while on duty." *Id.*

The Worcester Regional Retirement System offered a different scenario based on the *Boston Globe* article about Mrs. Songy's effort to find former Covid-19 patients who could donate blood to her husband. The article stated that Mrs. Songy "became violently ill in mid-April after contracting the virus. John took care of her." Finding 15.

The article clearly suggests that Mrs. Songy became ill first and that Det. Songy caught Covid from her after spending days taking care of his very ill wife. Mrs. Songy had asked to review the article before it was published but was not given the opportunity. She declared at the

hearing that the article's background description was simply wrong. She did not become ill with Covid-19 days before her husband, and she did not become so ill that her still-healthy husband had to care for her and caught Covid-19 as a consequence. There is no evidence that Mrs. Songy became ill with Covid in mid-April a week before her husband tested positive, let alone that she became so violently ill that her husband had to take care of her – at a time when he was still working a full schedule as a Rutland police detective. Mrs. Songy's denied that she ever became violently ill, and her complete recovery by May 2, 2020 supports that. Finding 15. Thus, I do not find the inference in the *Globe* article that Det. Songy caught Covid from his wife to be warranted.

Taken together, what the evidence shows is that Det. Songy was much more likely to have caught Covid-19 while working than while off-duty. For purposes of Sections 9 and 100A, it is not necessary to know the identity of the person who infected Det. Songy. He came into contact with numerous people in the two weeks before he was diagnosed. He caught Covid from one of them, which constitutes the "injury" for Section 9 purposes. Further, the actual infection was an "incident" that caused him to catch Covid-19 from which he died, which is sufficient for purposes of Section 100A. *Collins*, Decision at 4-5. Thus, Mrs. Songy has shown by the preponderance of the evidence that she qualifies to receive Section 9 and Section 100A benefits.

Section 100 is different because receipt of this benefit does not depend simply on the deceased police officer having been in the performance of his duties generally when he died but rather requires that he be engaged in specific duties that led to his death. Mrs. Songy relies on the section allowing recovery if "a police officer while at the scene of an emergency in the

performance of the police officer's duties is killed or sustains injuries which result in the police officer's death." M.G.L. c. 32, § 100. Not every call to which a police officer responds is an emergency. And in the context of policing, it must be an emergency from the perspective of the police department. Thus, for example, former Chief Magistrate Christopher Connolly held that a firefighter who died after shoveling out fire hydrants during a snow emergency was not at the scene of an emergency within the meaning of the statute. *Foley v. Lynn Retirement Board*, Docket No. CR-93-441, Decision at 4 (Div. of Admin. Law App., May 22, 1995). During the two weeks prior to his diagnosis, Det. Spongy responded to calls that were definitely emergencies, such as the fire and the car accidents to which he responded. But other calls to which he responded were not emergencies, such as the investigation of a car theft at an autobody shop or delivering evidence to a crime lab. In this context, Dr. Ellerin's conclusion that the detective likely caught Covid while on duty does not help make the case for a Section 100 benefit. There is no evidence that Det. Songy caught Covid at the scene of an emergency rather than while performing a non-emergency duty. Because Mrs. Songy did not present this level of proof, she has failed to demonstrate by a preponderance of the evidence that she is entitled to a Section 100 benefit.

Conclusion

For the reasons stated above, I reverse the State Board of Retirement's decision and direct it to award Joanne Songy Section 100A benefits. I reverse the Worcester Regional Retirement System's decision on Section 9 benefits and direct the Retirement System to award such benefits

to Mrs. Songy. I affirm the Retirement System's decision denying Mrs. Songy Section 100 benefits.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: April 4, 2025