

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala**

Marianne Spargo,
Petitioner

v.

Docket No. CR-24-0006

Boston Retirement System,
Respondent

Appearance for Petitioner:

Stephen Allard, Esq.

Appearance for Respondent:

Michael Sacco, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Because the petitioner received a negative panel report and has not offered a valid reason to reject it, the denial of her application for accidental disability retirement benefits is affirmed.

DECISION

The petitioner, Marianne Spargo, appeals the denial by the Boston Retirement System (BRS) of her application for accidental disability retirement benefits.

I held a hearing on March 11, 2025 by Webex, which I recorded. Mrs. Spargo testified

and called no other witness. I admitted 23 exhibits.¹ Both parties submitted post-hearing briefs in June 2025.

Findings of Fact

1. Mrs. Spargo entered data entry and handled the payroll at the Boston Housing Authority for 26 years. (Testimony)

Employee's claims

2. On July 25, 2019, Mrs. Spargo signed an Employee's Claim with the Department of Industrial Accidents (DIA). (Ex. 7)

3. The Employee's Claim stated that Mrs. Spargo had "Carpal Tunnel [in] both hands, [and] pinched nerve [in] both elbows and neck." The claim also stated that her first day of total or partial disability had been May 27, 2019. Her disability was continuing. (Ex. 7)

4. On March 21, 2020, Mrs. Spargo signed a second Employee's Claim with DIA. The description of her injury was simply "Back." Her first day of total or partial disability had been May 27, 2019, as in her first Employee's Claim. (Ex. 7)

Application for accidental disability retirement benefits

5. On March 15, 2021, Mrs. Spargo applied for accidental disability retirement benefits. (Ex. 3)

6. When asked for the medical reason why she applied, Mrs. Spargo answered in part that she had a diagnosis of "carpal tunnel and pinched nerve [in] both elbows and neck." (Ex. 3)

¹ BRS's post-hearing brief (pp. 6-7) argues for admission of Exhibit 23, but I did admit it at the beginning of the hearing.

7. When asked what duties she was required to perform, Mrs. Spargo wrote:

Data Entry, Computer Entering Time – 7 hours daily

Filing

Chairs – Papers 15-25²

(Ex. 3)

8. When asked what duties she was unable to perform because of her disability, Mrs.

Spargo answered, “All.”

9. When asked when she ceased to be able to perform all essential duties of her position,

Mrs. Spargo answered, “TBD.” (Ex. 3)³

10. When asked if she had sustained a personal injury or had undergone a hazard, Mrs.

Spargo checked the box for personal injury. (Ex. 3)

11. When asked when she sustained the personal injury, Mrs. Spargo answered April 26,

2019. (Ex. 3)

12. Even though Mrs. Spargo had answered that she had sustained a personal injury and

not undergone a hazard, when asked of the length of time she had been exposed to the hazard,

she answered, “26 years.” (Ex. 3)

13. When asked to describe the incident or hazard, Mrs. Spargo answered, “Filing,

Lifting, etc.” (Ex. 3)

Treating Physician’s Statement

14. Mrs. Spargo’s treating physician was Dr. Cynthia Cullinane, an internal medicine

doctor. (Ex. 4)

² The record does not explain this reference.

³ G.L. c. 32, §7(1) requires an application for accidental disability retirement benefits to specify a date upon which the applicant should have been retired. Ordinarily, an applicant stating “To be determined” would, or at least could, present a legal problem. “TBD” does not present a problem here because Mrs. Spargo’s application fails for an unrelated reason.

15. On December 18, 2020, Dr. Cullinane wrote in the Treating Physician's Statement that:

A. Mrs. Spargo was physically incapable of performing the essential duties of her job;

B. her injury or exposure was in March 2018;

C. she was last able to perform essential duties on July 14, 2018;

D. she was "[n]o longer able to type" and could not type longer than 10 minutes without pain;

E. her "function did not improve with 2 surgeries";

F. her diagnosis was bilateral carpal tunnel syndrome⁴;

G. the anticipated natural course of the diagnosis was stable or plateau; and

H. "Overuse in data entry for 26 years directly contributed to her carpal and cubital tunnel syndromes."

(Ex. 4)

Dr. Golberg's medical panel certificate

16. On April 6, 2022, Dr. John Golberg, an orthopedist, examined Mrs. Spargo and completed a regional medical panel certificate and narrative letter. (Ex. 14)

17. Dr. Golberg opined that Mrs. Spargo was physically incapable of performing the essential duties of her job; her incapacity was likely permanent; and her incapacity might be the natural and proximate result of the personal injury she had sustained. (Ex. 14)

⁴ With this statement, and no mention of pinched nerves in both elbows and neck, Dr. Cullinane narrowed Mrs. Spargo's application to one involving carpal tunnel syndrome.

18. In his narrative, Dr. Golberg stated that Mrs. Spargo reported that she continued to have some pain in her right hand and wrist and continued to have difficulty with fine motor skills. (Ex. 14)

19. Dr. Golberg stated that Mrs. Spargo's right hand had normal musculature function and great strength. (Ex. 14)

20. Dr. Golberg diagnosed Mrs. Spargo's conditions to include cervical spondylosis, right-sided cervical radiculopathy, right carpal tunnel syndrome, right cubital tunnel syndrome, post-operative right carpal tunnel release and right cubital tunnel release, and persistent cervical radiculopathy. (Ex. 14)

21. Dr. Golberg wrote in part:

This disability is likely to be permanent. She has evidence of cervical radiculopathy, with multi-level changes of the cervical spine, related to cervical spondylosis. Though there is cervical involvement, her disability has arisen as a consequence of work-related onset on 4/26/19, with respect to the symptoms of carpal tunnel syndrome and cubital tunnel syndrome of the right wrist. The finding of cervical spondylosis is considered to be unrelated.

I would consider Ms. Spargo to have the potential of re-injury to herself if she were to attempt to return to the essential demands of her occupation.

(Ex. 14)

Request for clarification to Dr. Golberg

22. On September 19, 2023, BRS wrote to Dr. Golberg. The letter cited Dr. Mark Berenson's independent medical opinion for DIA that Mrs. Spargo was not permanently disabled from performing her job duties based on her right hand (December 3, 2020); Dr. Arnold Savenor's similar opinion (July 3, 2020); and the opinion of Dr. Peter Kim (Mrs. Spargo's surgeon) that she was cleared to return to work without restrictions six weeks after her surgery. BRS asked "whether that information alters your determination....." (Ex. 19)

23. On September 26, 2023, Dr. Golberg clarified his regional medical panel opinion in a letter that he called an addendum. He discussed the reports by Dr. Kim, Dr. Berenson, and Dr. Savenor. He wrote in part:

My evaluation of disability is more related to the presence of significant cervical spondylosis. Her investigation in that regard was incomplete at the time of my assessment. I am not certain whether she would be a candidate at some point for surgical treatment to the cervical spine. While I agree that there was some resolution of symptoms following the carpal tunnel and cubital tunnel release surgeries, she had persistent arm pain subsequent to that time that prevented her from performing the essential duties of her occupation.

It is on the basis of her experience with attempting to return to work, and her continuation of persisting symptoms associated with performing the normal tasks of her occupation[,] that I consider her to be disabled. She was having diminished symptoms at the time of my examination in general, since she was retired, but she continues to have radiating symptoms to the upper right extremity. Ms. Spargo continues under assessment regarding her cervical spinal disease.

(Ex. 20)

24. Dr. Golberg did not change his opinion after being asked for clarification. (Ex. 20)

Dr. Bulczynski's medical panel report

25. On April 12, 2022, Dr. Wojciech Bulczynski, an orthopedist, examined Mrs. Spargo and completed a regional medical panel certificate and narrative letter. (Ex. 15)

26. Dr. Bulczynski opined that Mrs. Spargo was physically incapable of performing the essential duties of her job; her incapacity was likely permanent; and her incapacity might be the natural and proximate result of the personal injury she had sustained. (Ex. 15)

27. Dr. Bulczynski later changed his opinion (Ex. 18), as discussed below.

28. In his narrative, Dr. Bulczynski stated that Mrs. Spargo reported that she had noticed an injury at work on April 26, 2019. There was no acute injury. Rather, she noticed increasing pain in her right elbow, wrist, and hand, with numbness and tingling. (Ex. 15)

29. Dr. Bulczynski wrote that an EMG and nerve conduction tests on April 26, 2019

revealed mild to moderate chronic right cervical radiculopathy and ulnar and median nerve compression of the right upper extremity. (Ex. 15)

30. Mrs. Spargo underwent surgery on November 6, 2019. Dr. Bulczynski wrote in part:

Post-surgery, she stayed out of work for six weeks. [Her doctor] stated that she could return to work with no limitations. However, Ms. Spargo states that her pain was not completely removed, and she still had significant difficulties. Therefore, she could not return to work.

Ms. Spargo was forced to retire from her job in January 2020, primarily due to right wrist pain, but secondarily due to her neck pain....

Ms. Spargo's current symptoms are primarily that of right wrist pain, which occurs whenever she tries to type, or repetitively use her wrist. Secondarily, there is neck pain with some radiation to the back of the shoulder, but no actual radiculopathy. She denies increasing weakness or numbness....Ms. Spargo also experiences numbness in the median nerve distribution.

(Ex. 15)

31. Dr. Bulczynski diagnosed Mrs. Spargo's conditions as "Right carpal tunnel and ulnar nerve compression, due to [the] repetitive nature of her work" and "Cervical spondylosis, which was aggravated by the above work activities...." (Ex. 15)

32. Dr. Bulczynski also wrote that Mrs. Spargo

developed increased symptoms due to the repetitive nature of her work-related activities....The work-related injury also caused an aggravation of her pre-existing cervical spondylosis.

If Ms. Spargo were to return to her occupation, she would risk...re-injury to herself.

(Ex. 15)

Request for clarification to Dr. Bulczynski

33. On September 19, 2023, BRS wrote to Dr. Bulczynski. (Ex. 17) The letter resembled the letter that BRS wrote to Dr. Golberg on the same date, also requesting clarification. (Ex. 19)

34. On April 26, 2019, Dr. Bulczynski wrote in part:

Currently, I have been presented with a report from Dr. Berenson on 12/3/20,⁵ who states that she [Mrs. Spargo] had excellent recovery from her ulnar and median nerve compression, and thus, there is no disability....Dr. Selvinor⁶ on 7/3/20 was also of the opinion that she is not permanently disabled from her employment as a result of the right-hand injury.

(Ex. 18)

35. Dr. Bulczynski also discussed and emphasized Dr. Kim's note of December 3, 2019, which stated that Mrs. Spargo could return to work without restrictions. Dr. Bulczynski wrote that Dr. Berenson, Dr. Savenor, and Dr. Kim "agree that her symptoms were related to work activities, but they were very clear that she was not disabled...." (Ex. 18)

36. Dr. Bulczynski concluded:

Based on this new evidence,⁷ the objective findings, and the physician's⁸ reports, I will change my opinion. Ms. Spargo is not permanently disabled as a result of the work injury on 4/26/19.

(Ex. 18)

Dr. Drinker's medical panel report

37. On April 14, 2022, Dr. Henry Drinker, an orthopedist, examined Mrs. Spargo and completed a regional medical panel certificate and narrative letter. (Ex. 15)

⁵ It is unclear why Dr. Bulczynski implied that he had just received Dr. Berenson's report. In his regional panel report, Dr. Bulczynski acknowledged reviewing Dr. Berenson's independent medical evaluation. (Ex. 15)

⁶ This should have been "Savenor."

⁷ It is unclear why Dr. Bulczynski called the physicians' reports "new evidence." In his regional panel report, Dr. Bulczynski acknowledged reviewing Dr. Berenson's independent medical evaluation, as stated already. (Ex. 15) He acknowledged reviewing Dr. Savenor's "[i]ndependent medical evaluations" – in the plural. And he stated that Dr. Kim had opined that Mrs. Spargo "could return to work with no limitations."

⁸ This apparently should have been "physicians'."

38. Dr. Drinker opined that Mrs. Spargo was physically incapable of performing the essential duties of her job; her incapacity was likely permanent; and her incapacity might *not* be the natural and proximate result of the personal injury she had sustained. (Ex. 15)

39. In his narrative, Dr. Drinker wrote that Mrs. Spargo reported that her surgery was successful in alleviating her numbness and dysesthesias in the right hand, as well as her right elbow pain. However, it has left her with difficulty holding objects in her right hand....[S]he gets numbness (without tingling) in the whole hand at the present time, with neck pain occurring most of the time throughout the day, and occasionally...at night.

[T]he EMG also documented chronic right C5 to T1 radiculopathy, right greater than left side.

(Ex. 15)

40. Dr. Drinker diagnosed Mrs. Spargo's conditions as including right dominant carpal tunnel and cubital tunnel syndromes, and cervical spondylosis, with degenerative disc disease, and C5 through T1 radiculopathy of the right upper extremity. (Ex. 15)

41. As for chronic right cervical radiculopathy, Dr. Drinker stated that Mrs. Spargo continued to experience symptoms involving the right hand and right upper extremity. He opined that it

likely represents a pre-existing condition not associated with the work activities....Her work-related activities have precipitated the subsequent need for treatment in the form of an ulnar and median nerve decompression in the right upper extremity.

(Ex. 15)

42. Dr. Drinker further opined that her incapacity was

the direct and proximate cause⁹ of her pre-existing lumbar spondylosis and radiculopathy...Her disability is not the result of any specific injury or work-related activities.

⁹ Dr. Drinker apparently meant "result," not "cause."

(Ex. 15)

43. Dr. Drinker added that if Mrs. Spargo resumed working in her previous job, “she would be at significant risk of re-injury....” (Ex. 15)

Denial and appeal

44. On December 20, 2023, BRS denied Mrs. Spargo’s application; on December 22, 2023, it notified her of the denial. (Ex. 1)

45. As its reason for the denial, BRS wrote in part, “The member has a majority negative medical panel certificate and medical report.” (Ex. 1)

46. On January 3, 2024, Mrs. Spargo timely appealed. (Ex. 2)

Discussion

The medical panel issued a so-called negative panel report. *Lynne M. Saulnier v. State Board of Retirement*, CR-98-156 (DALA 1999). A negative panel report generally precludes an applicant from receiving accidental or involuntary disability retirement benefits. *Quincy Retirement Board v. Contributory Retirement Appeal Board*, 340 Mass. 56, 60 (1959) (“A certification of incapacity is a condition precedent to accidental disability retirement by the local board”) (citations omitted).

The general rule that a negative panel ends an application for accidental or involuntary disability retirement benefits has a few exceptions: if the medical panel did not “conform[] to the required procedure of physical examination”; it lacked “all the pertinent facts”; it used an erroneous legal standard; or the medical certificate was “plainly wrong.” *Kelley v. Contributory Retirement Appeal Board*, 341 Mass. 611, 617 (1961).

The “plainly wrong” exception does not entitle a petitioner to “an opportunity for a retrial of the medical facts.” *Id.* A medical panel’s opinion is not plainly wrong simply because a petitioner disagrees with it. *Debra L. Burke v. State Board of Retirement*, CR-17-677 (DALA 2020).

Kimberly Godfrey v. State Board of Retirement, CR-16-562 (Div. Admin. L. App. Jan. 24, 2025).

Mrs. Spargo does not argue that any of the four exceptions applies. Rather, she argues that the medical panelists’ opinions conflict with each other and the treating physician’s

statement, and because of that, and because of the causal relationship of her injury and disability, the negative panel report should “not be dispositive.” (Pet. Br. unnumbered p.) That is not the law. If panelists disagree with each other on various details and issue a negative panel report, it is still a negative panel report. If two panelists issue negative opinions and the third panelist does not, it is still a negative panel report. Negative panel reports *always* conflict with a treating physician’s statement – because an application for accidental disability retirement benefits cannot advance without a favorable statement from the treating physician. G.L. c. 32, §8(1).

BRS offers two other arguments in support of its denial. I need not reach them.

Conclusion and Order

The Boston Retirement System’s denial of Mrs. Spargo’s application for accidental disability retirement benefits is affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

Kenneth Bresler
Administrative Magistrate

Dated: August 29, 2025