COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

STACEY S.,[1] *Petitioner*	:	Docket No. CR-20-0001
	:	Date: January 12, 2024
v.	:	
BRISTOL COUNTY RETIREMENT BOARD, *Respondent*	:	
and	:	
TOWN OF RAYNHAM,[2] *Intervenor.*	:	

Appearance for Petitioner:

Leigh Panettiere, Esq.

Appearance for Respondent:

Michael Sacco, Esq.

Appearance for Intervenor:

Joseph Emerson, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

Petitioner's application for accidental disability retirement should have been approved. The Board's argument that the Petitioner committed serious and willful misconduct by lying on her pre-employment application—raised for the first time in this appeal—is meritless. Additionally, the Petitioner provided timely notice of her injury in both a contemporaneous

[1] A pseudonym. *See* G.L. c. 4 § 7, 26th para., (c).

[2] The Town of Raynham was allowed to intervene on February 19, 2020.

police report and the documents submitted in support of her application for "line of duty" benefits. Finally, she has met her burden of proving she is entitled to accidental disability.

INTRODUCTION

Pursuant to G.L. c. 32, § 16(4), the Petitioner timely appeals the Bristol County Retirement Board's ("BCRB") vote to deny her application for accidental disability. The Petitioner was a police officer in the Town of Raynham. She applied for accidental disability in December 2018; the Board ultimately rejected her application in December 2019.

I conducted a hearing, in person, at the Division of Administrative Law Appeals office on April 27, 2023. The Petitioner testified on her behalf; Virginia Luiz, LICSW also testified on behalf of the Petitioner. The Board offered no witnesses. I entered 22 exhibits into evidence.

Both parties submitted post-hearing briefs on October 5, 2023. The Petitioner submitted one additional exhibit on December 15, 2023, which I now enter and mark as Exhibit 23. The Board submitted a post-hearing supplemental memorandum on December 26, 2023, and the Petitioner submitted a reply on December 29, 2023, at which point I closed the administrative record.

FINDINGS OF FACT[3]

1. The Petitioner began working for the Town of Raynham in 2005. She had various jobs

[3] The Petitioner's testimony was a little incongruent. I do not believe she was trying to mislead me or obfuscate the facts. She now carries a diagnosis of Attention Deficit Disorder ("ADD") and made reference to needing to take her medication during the hearing. She was also asked to testify about several traumatic events. I view her testimony through that lens.

I find she was a credible witness. That is not to say she had a perfect memory. But she prefaced many answers by making clear she could not readily remember or was confused about some of the timing. These answers were sincere. Therefore, I credit that she could not actually recall certain events and her testimony represented her best and honest effort to report what she remembers today.

I reject the Board's argument that she was evasive, "intentionally soft-pedaled and downplayed" prior incidents, or that her testimony was absurd and "strained credulity." That

including as a dispatcher and then as a reserve police officer. In 2015, she became a full-time police officer. (Stipulated facts; Petitioner testimony.)

2012 mental health treatment

2. Prior to becoming a full-time police officer, but while working for the Raynham police department, she had a history of mental health treatment. In 2012, the Petitioner was hospitalized at Bournewood hospital. There are no records from then, but 2018 records from McLean Hospital ("the 2018 records") and other documents reference her time there. (Ex. 12.)

3. In 2012, she had been behaving "bizarrely in public" which prompted a police response from both Taunton and Raynham police. (Ex. 6, Dr. Polizoti report, pg. 2.)

4. The 2018 records note she was admitted in 2012 for a "psychotic outbreak and paranoid thinking." (Ex. 12, pg. 591.)

5. The same records indicate that her "last [inpatient] was in Bournewood in 2012 for [Post-Traumatic Stress Disorder]." (Ex. 12, pg. 243).[4]

6. Because the Petitioner was a reserve police officer in 2012, she was referred for a

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ignores the difficulty someone with prior trauma may have in accurately remembering those past events, not to mention someone who also has ADD and other present mental health diagnoses.

[4] The 2018 records also reference a conversation a therapist had with the Petitioner's parents (in 2018). At that time, her parents indicated the Petitioner had therapy as a young child, a few manic episodes—including one in high school—and a few hospitalizations. (Exhibit 12, pg. 267.) According to this record, it is not clear why she needed therapy as a child, why or when she was hospitalized, and the severity of her "manic" episodes. The Petitioner could not remember much about therapy as a child or any manic episodes as a teenager. (Petitioner testimony.) Because the parents' information was vague, uncorroborated, and totem-pole hearsay, I do not place any weight on this evidence and will disregard it.

fitness-for-duty evaluation to make sure she could return. This was her first of three fitness-for-duty evaluations. Dr. Leo Polizoti conducted the evaluation in June 2013. (Ex. 10.)

7. He administered some psychological tests, interviewed the Petitioner, and reviewed information provided by her treating psychiatrist, therapist, and the Chief of Police. (Ex. 10.)

8. Dr. Polizoti noted she had experienced "serious domestic issues" that were one of the root causes of her hospitalization. He was aware of the dates of her treatment, both inpatient and outpatient. He acknowledged she experienced an "acute stress disorder" and was placed on an anti-psychotic medication. That was ultimately discontinued and replaced with an anti-depressant. By the time of Dr. Polizoti's evaluation, the Petitioner was "doing very well" and was "very high functioning." (Ex. 10.)[5]

9. He cleared her to return to duty. (Ex. 10.)

Petitioner's application to be a police officer.

10. When the Petitioner applied to be a full-time police officer in 2014, she filled out an application. The application included a detailed list of questions regarding her present and past medical history. (Ex. 4.)

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[5] Dr. Polizoti wrote that Petitioner admitted herself to Morton Hospital (in Taunton) and then transferred to Pembroke Hospital in November 2012 for about seven days total. He does not reference Bournewood. On the other hand, the 2018 records do not reference the hospitals listed by Dr. Polizoti. Both records refer to her hospitalization in 2012 and note she was prescribed Haldol. Either the three facilities are all connected, one party mistook where she was hospitalized, or these refer to two separate incidents. Given that neither party provided any evidence that the Petitioner was hospitalized more than once in 2012, I am left with this inconsistency in the record. I deduce that both Dr. Polizoti and the 2018 records refer to the same incident and same hospitalization.

11. One of the questions asked if she had any mental or emotional disorders. She replied "no." (Ex. 4.)

12. The next question asked if she ever had "mental health treatment of any type." She replied "yes." She elaborated: "counseling when going through divorce and custody proceedings." (Ex. 4.)

13. At the hearing, the Petitioner explained that she checked "no" as to having any disorders because, when she filled out her application, she did not think she had any disorders. She acknowledged her 2012 hospitalization but denied knowing she had a "diagnosis" at the time. Instead, she believed she was hospitalized for her anxiety and depression, but that it was an isolated episode. (Petitioner testimony.)

14. She intended her reference to "counseling" to include her time at Bournewood, because her divorce and custody battle is what she believed led to her 2012 hospitalization. (Petitioner testimony.)

15. The 2018 records indicated the Petitioner was diagnosed with Post Traumatic Stress Disorder ("PTSD") during her 2012 hospitalization. (Ex. 12.)

16. The Petitioner explained that she did not remember being diagnosed, or even being told she was diagnosed, with PTSD during her 2012 hospitalization. She characterized her hospitalization as related to anxiety and domestic abuse by her husband. When she filled out her employment application, she did not believe she had an "official" diagnosis. (Petitioner testimony.). I credit the Petitioner's testimony on this point.

17. Her therapist, Virginia Luiz, testified on her behalf. She was asked about the Petitioner's answers to these questions. In her opinion, the Petitioner did have prior disorders. Ms.

Luiz explained that many people do not recognize that they have a valid diagnosis, or disorder, when they are first beginning to address it. They lack insight or may minimize the extent of their problems. "Sometimes the denial can get in the way of really being able to be accurate; not with an intent to be dishonest but with a – really not believing that perhaps that's accurate and that's truthful about who they are and how they navigate the world." (Luiz testimony, Transcript pg. 80.). I credit Ms. Luiz's testimony on this point.

18. In 2015, the Petitioner's application was approved and she became a full-time police officer. (Petitioner testimony; Ex. 1.)

Traumatic incidents

19. During her time as a police officer, she experienced several traumatic events. For example, in July 2015 she reported to a call in which a victim alleged a man had broken into her home. Upon arrival, the Petitioner found the man. The man then proceeded to expose himself repeatedly, on scene and later at the police station. He exhibited other erratic and scary behaviors. (Ex. 5.)

20. In January 2017, she was part of large number of police officers who responded to an agitated, armed man. He fired at them and there was a long stand-off. Eventually he surrendered. (Ex. 5.)

21. In February 2017, she responded to a car accident in which one driver did not survive. He had to be pulled out of his car with the "jaws of life." The Petitioner was accompanying him to the hospital in the ambulance when he died. (Petitioner testimony; Ex. 5.)

22. On September 8, 2017, she responded to an office building. When she arrived, some employees had subdued a suspect who had wielded a knife. He had slashed the business owner's throat, and that person was bleeding when the Petitioner and other first resonders arrived. The suspect was combative, which required her to taser him. (Ex. 5.)

23. But the most harrowing and traumatic incident she witnessed occurred on September 3, 2017. (Petitioner testimony; Ex. 5.)

24. That day, she responded to a call about a possible suicide. When she arrived, the scene was horrific. The deceased was unrecognizable; there was blood everywhere; the deceased's father was present and beside himself. (Petitioner testimony.)

25. Despite the gore, the Petitioner had no choice but to assess and process the scene. It was her duty. (Petitioner testimony.)

26. She described the scene in her police report:

> Upstairs in his bedroom we found [the deceased.] It appeared he died from a self inflicted shot gun shot, to the head.
>
> It was immediately apparent from the condition of the deceased body and large amount of blood, some of which had partially dried around it, that [he] had been deceased for some amount of time. Dried blood was visible coming from his head and ears.

(Ex. 5.)

27. Later that day, as she was writing the police report, the Petitioner realized that she knew the deceased. She had interacted with him twice in her role as a police officer. (Petitioner testimony.)

28. Among other emotional reactions, she felt a tremendous amount of shame and guilt for

his death. [6] (Petitioner testimony.)

29. The Petitioner continued to work after that incident, even though she was having a harder and harder time doing her work. She was experiencing symptoms of PTSD, although at the time she did not recognize them as such. (Petitioner testimony.)

30. She was having nightmares or night terrors (she would wake up with her shirt drenched in sweat), anxiety, forgetfulness, was unable to relax or "feel ok," could not stop thinking about the suicide, and experienced panic attacks. (Petitioner testimony.)

31. The Petitioner last worked on March 8, 2018 when she took leave. (Stipulated facts.)

32. There are regional peer support teams formally known as the Critical Incident Stress Management ("CISM") teams. It is a program widely used to assist first responders emotionally process their experiences at critical incidents. After an incident, the CISM teams do "diffusing and debriefings" to assist the responders with normalizing the event as much as possible. If they believe someone may need further support, they can refer them to help. (Luiz and Petitioner testimony.)

33. The Petitioner was actually part of the CISM team. Ironically, she was not referred to the CISM team following the September 2019 incident. (Ex. 13.)

34. Leading up to her last day of work, the police department was aware the Petitioner was having difficulty coming into work. Various officers had communicated with her. In March, a Lieutenant and patrol officer on the CISM regional peer support team each

[6] Ms. Luiz explained that it is normal for persons who have PTSD to feel shame and guilt after responding to a traumatic incident. The shame and guilt do not cause PTSD; rather, they are a symptom of it. In this case, the Petitioner explained she felt shame and guilt because she knew the deceased. Ms. Luiz explained many first responders feel shame and guilt even when the deceased is a stranger. (Luiz testimony.)

informed the Chief that the Petitioner was seeking treatment for stress problems. (Dr. Polizoti report, pg. 2, Ex. 6A.)

35. This coincides with the Petitioner's testimony that, at that time, she finally recognized that she needed to speak with someone. Eventually she was directed to Virginia Luiz for therapy by another officer on the CISM team after she spoke to them about her mental status. (Petitioner testimony; Ex. 13.)

36. A few months later, she was admitted into MacLean hospital. The Petitioner was hospitalized "due to a presentation of what appeared to be a psychotic PTSD episode where she was disorganized in her behaviors." (Ex. 12.)

37. In July 2018, the Petitioner had an open grievance.[7] Her lawyer at the time collected incident reports for several events: January 16, 2017, February 25, 2017, September 3, 2017 and September 8, 2017. He forwarded these to Chief Donovan. The chief, in turn, sent those reports to Dr. Polizoti who was beginning the process of conducting the Petitioner's second fitness-for-duty evaluation. (Ex. 23.)

38. On July 26, 2018, Dr. Polizoti issued his report. He explained the Petitioner was referred to him because her "emotional stability has come into question." He administered several psychological tests and conducted a clinical interview. He found she was unfit to return to duty. (Ex. 6A.)

39. He documented communications between the Petitioner and the Raynham police department about her current situation, all in 2018: a conversation with a sergeant and

[7] It is not readily apparent what the grievance was for, but it appears related to her leave and hospitalization.

lieutenant in March about her mental status, a March 8 letter to the chief about needing time off for a "personal matter," the lieutenant and patrol officer informing the chief they referred her to treatment, a conversation between the Petitioner and the chief about returning to work and needing to pass a fitness-for-duty evaluation in June, the chief becoming aware her stepfather had secured her firearm in March, and a June conversation in which the chief learned the Petitioner's stepson had reported she was acting strange and convinced her to be admitted to the McLean psychiatric unit. (Ex. 6A.)

Application for Injured in Line of Duty benefits

40. On August 8, 2018, the Petitioner applied for "line of duty" injury benefits. (Ex. 6A.)

41. The application included, at the very least, a July letter from a doctor at McLean Hospital indicating she was receiving treatment for symptoms of PTSD, Dr. Politzoti's July report, and an e-mail from the Petitioner's attorney referencing the incident reports he previously sent to the chief. (Ex. 6A.)

42. The application was followed by a letter from the union representative that the Petitioner was diagnosed with PTSD as a "result of multiple documented incidents she was directly or indirectly involved with while working as a full-time police officer for the Town." (Ex. 6B.)

43. Her application was initially denied for lack of documentation. (Ex 6B.)

44. In an effort to resolve the matter, she participated in her third fitness-for-duty evaluation, again with Dr. Polizoti. He drafted another report on October 23, 2018 in which he continued to opine she was unfit for duty. (Ex. 10.)

45. This time he was able to review reports from Law Enforcement, Active Duty, Emergency Responder ("LEADER") program at McLean Hospital. He was made aware of her present diagnosis of PTSD and concurred with it. He explained:

> Over the years on the job, she has been exposed to multiple critical incidents resulting in traumatic reactions. It appears that her lack of effective coping skills needed to manage her exposure to these critical incidents has resulted in her developing symptoms [of PTSD].
>
> What precipitated this episode of PTSD, and what she reports as the most significant critical incident in her career, involved a call in which she had assisted a person who later committed suicide. This incident occurred on September 13, 2017[8]. . . She reports that this job-related critical incident is the cause of her current PTSD which has rendered her unfit for duty. It appears that this incident may in fact be the major contributing factor to her PTSD diagnosis and ultimately being found to be unfit for duty.

(Ex. 10.)

46. Eventually, on December 6, 2018, the Town, the police union, and the Petitioner executed a settlement agreement that placed the Petitioner on "injured on duty" status pursuant to G.L. c. 41, § 111F, retroactive to August 8, 2018. (Stipulated facts.)

47. The settlement was based, in part, on Dr. Polizoti's October report. (Ex. 6B.)

Application for Accidental Disability Retirement

48. On December 7, 2018, the Petitioner filed her application for accidental disability retirement. (Ex. 1.)

49. It stated the medical reason for her application was "PTSD, panic attacks, anxiety and depression, exacerbated by sleep apnea." As for the dates of her injury, she wrote they "culminat[ed] on 9/3/17 with additional contributing events." The application referenced "attached incident reports." (Ex. 1.) The exhibits do not contain the attached reports, but

[8] This is likely a typo; Dr. Polizoti probably meant September 3, 2017.

I infer they were the same ones previously sent to the chief in July 2018.

50. For some unknown reason, she did not file the treating physician's statement until September 17, 2019. (Ex. 2.)

51. She was evaluated by a joint medical panel in November 2019. (Ex. 7.)

52. The Panel unanimously opined she met all the criteria for accidental disability. It concluded she "seems clearly to have developed PTSD in the context of her job duties, with cumulative exposure to trauma prior to the 2017 episodes . . . We thought that any alleged peexisting or 'non-job related incidents' played no role in her permanent incapacity." (Ex. 7.)

53. The Panel concluded that "it seemed clear that said incapacity is the natural and proximate result of the personal injury sustained[.]" (Ex. 7.)

54. Nevertheless, in December 2019, the Board voted (3-2) to deny her application "based on your inability to establish that any permanent incapacity from which you suffer is the natural and proximate result of a personal injury sustained or hazard undergone pursuant to M.G.L. c. 32, § 7 and the interpretative case law." (Ex. 8.)

Testimony of Virginia Luiz, LICSW

55. Ms. Luiz is a licensed independent clinical social worker ("LICSW"). She was a credible and knowledgeable witness. She is a veteran and has been a therapist for almost 30 years. Among her specialties, she has significant experience treating and evaluating first responders for PTSD. (Luiz testimony; Exhibit 22.)

56. She explained generally how someone develops PTSD and how it impacts them thereafter. (Luiz testimony.)

57. It is treatable, sometimes to the point at which the person no longer manifests symptoms. But it is never completely eradicated. There is always the potential the person could be triggered later. (Luiz testimony.)

58. In Ms. Luiz's opinion, by the time the Petitioner came to see her in the summer of 2018, she suffered from PTSD, generalized anxiety and major depression. (Luiz testimony.)

59. The September 3, 2017 incident caused her PTSD. (Luiz testimony; Ex. 13.)

60. Ms. Luiz formed this opinion over the course of several sessions with the Petitioner. (Luiz testimony.)

DISCUSSION

The Petitioner has the burden of proving every element of their disability claim. *Lisbon v. Contributory Ret. App. Bd*., 41 Mass. App. Ct. 246, 255 (1996); *Frakes v. State Bd. of Ret.*, CR-21-0261, 2022 WL 18398908 (DALA Dec 23, 2022). "G.L. c. 32, § 7(1) provides for accidental disability retirement benefits if a member (1) 'is unable to perform the essential duties of [their] job' and (2) 'such inability is likely to be permanent before attaining the maximum age for [their] group,' (3) 'by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [their] duties,' (4) 'without serious and willful misconduct on [their] part.'" *Brady v. Weymouth Ret. Bd.*, CR-20-0201, *9 (DALA Jul. 15, 2022).

A. <u>The Petitioner did not commit "serious and willful misconduct"</u>

As a preliminary matter, the Board now raises the argument that the Petitioner is ineligible for disability because she committed "serious and willful misconduct." It argues she purposely misled or omitted evidence of a prior diagnosis of PTSD on her pre-employment application.

A member can be disqualified from receiving accidental disability if there is "serious and willful misconduct on [their] part." G.L. c. 32, § 7(1). Although the statute does not explicitly state it applies to misconduct pre-dating the injury, such as during the preemployment screening process, that is how CRAB has interpreted it: a member "would not be eligible [for accidental disability] due to his serious and willful misconduct in making misstatements as to his physical condition at the time of his hiring." *Kallas v. Quincy Ret. Bd.*, CR-00-1165, *2 (CRAB Jan. 18, 2002). *See also Carrier v. Fall River Ret. Bd.*, No. CR-18-0274 (DALA Jul. 24, 2020) ("Neither the DALA nor [*Kallas* cases] evaluated whether the serious and willful misconduct phrase in Section 7(1) could be referring to matters related to a preemployment physical."); *Beamud v. Cambridge Ret. Bd.*, No. CR-09-355 (DALA Jun. 21, 2013) ("as the statute is phrased, it refers only to 'serious and willful misconduct that resulted in the Petitioner's injury.'"). *Kallas*, however, does not stand for the proposition that *every* preemployment misrepresentation is disqualifying but, rather, only those misstatements that ultimately contributed to the injury. *Internicola v. Saugus Ret. Bd.*, CR-20-385, 2022 WL 17081140 (DALA Nov. 10, 2022).

"Serious and willful" conduct is an exacting standard:

> "[S]erious and willful misconduct" in the retirement context has the same meaning as it has in the workers' compensation statute. . . Serious and willful misconduct "is much more than mere negligence, or even than gross or culpable negligence. It involves conduct of a quasi-criminal nature, 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." *See Scala's Case*, 320 Mass. 432, 433-434 (1946), *quoting In re Burns*, 218 Mass. 8, 10 (1914). "In order to prove willful misconduct, [the Respondent would] have to establish facts to support the proposition that an employee acted with deliberate indifference to probable grave injury." *Tripp's Case*, 355 Mass 515, 518 (1969). "The word serious refers to the conduct itself and not to its consequences. Willful implies intent or such recklessness as is the equivalent of intent." *Dillon's Case*, 324 Mass. 102, 110 (1949).

Ovalle v. Everett Ret. Bd., CR-15-508, *25 (DALA Feb. 12, 2021).

Putting aside whether the Petitioner's answers to her employment application contributed to her injury, I do not find that the Petitioner did anything willfully. That involves doing something intentionally, or with wanton and reckless disregard. Here the "something," according to the Board, was failing to disclose she had previously been diagnosed with PTSD. However, I credit the Petitioner and Ms. Luiz's testimony that the Petitioner did no such thing. Her answers in her employment application were sincere. In her mind, she answered the questions as truthfully as possible based on her understanding of her past trauma. Her history was complicated. It is not even clear from the records that she was actually diagnosed with PTSD; it is therefore believable that she may not have known that herself. Moreover, in her application, she was honest about what triggered her hospitalization in 2012—domestic violence—even if she could not comprehend that there were perhaps other factors at play that led to her hospitalization. In short, she was as honest as she could be in her application and did not act with deliberate indifference.

The Board also argues that if the Petitioner had disclosed this history, the police department would not have hired her.[9] But the Raynham police department was aware of the Petitioner's 2012 hospitalization because it happened while she worked there, and it was referenced in Dr. Polizoti's 2013 report. Dr. Polizoti even explained in his July 2018 report that the Raynham police department was responsible for having her voluntarily committed. (Ex. 6A.)

[9] The Board bases this conclusion on an exhibit it attached to its closing brief (the Human Resources Division Physician's Guide, Initial-Hire Medical Standards). I do not consider this because it was not admitted at the hearing, and I received no testimony about it. Moreover, the Board's argument is based on its interpretation of this ambiguous document. But any findings on this point could come only from competent evidence (presumably testimony from someone with knowledge on this subject). Board counsel's questions to Ms. Luiz did not produce this evidence.

It is therefore far from clear they would not have hired her had she answered differently since the department clearly knew about her history.

Moreover, whether something is "serious" is not about its consequences. *Ovalle, supra*. Rather, the question is, did the member do something willfully and, if they did, is what they did willfully also serious? Because I find the Petitioner did not willfully mislead the Board, I need not decide if she did anything "serious."

B. The Petitioner provided a timely "notice of injury"

Typically, a member is eligible for accidental disability only for any injury that occurred "within two years prior to the filing of such application." G.L. c. 32, § 7(1). In this case, the parties agree that the Petitioner's application was not considered filed until she submitted the physician's statement on September 17, 2019. *Bistany v. Lawrence Ret. Bd.*, CR-17-074, 2023 WL 415590 (DALA Jan. 20, 2023).[10] However, there are two exceptions applicable in this case:

- If a written notice of the injury was filed with the Board within ninety days of its occurrence, G.L. c. 32, § 7(1); or
- If in Group 4, and not eligible for worker's compensation, a record of the injury is on file "in the official records of [the] department," G.L. c. 32, § 7(3)(a).[11]

[10] To be sure, *Bistany* was about when an application is considered "filed" for purposes of calculating the member's effective retirement date. There, the application was considered "filed" when the member finally submitted the physician's statement. The Petitioner did not argue otherwise in this case, but no such argument was necessary, given my conclusions below that timely notice was provided. Therefore, I have no occasion to consider whether an application may be considered "filed" before it is complete for purposes of determining if an injury occurred within two years.

[11] There is one other exception referenced by the parties: if, "within fifteen days of the receipt of knowledge of a personal injury sustained by a member of the department, [the head of the department notified] the board in writing of the time, place, cause and nature of the injury." G.L. c. 32, § 7(3)(b). However, there is no evidence in this case that this exception was satisfied. Even though the chief received abundant evidence about the Petitioner's mental health status and

The incident that the Petitioner says led to her injury occurred on September 3, 2017; her application was not considered filed until September 17, 2019, just over two years later. Thus, she must meet one of the timing exceptions.

1. *The Police Report, § 7(1)*

A report of the incident was filed with the department within 90 days of its occurrence—the police report the Petitioner drafted. In certain cases, such a report suffices as notice. *Kurt K. v. Hampden County Reg. Ret. Bd.*, CR-21-631, CR-22-117, 2023 WL 4846321 (DALA Jul. 21, 2023); G.L. c. 32, § 7(1). In *Kurt K.*, a firefighter drafted a critical incident report following his response to a car crash. He argued he developed PTSD from that incident. Although his disability application was filed more than two years after the incident, DALA found his initial report satisfied the notice requirement:

> It remains true that a report of an employee's participation in a severely distressing event may simultaneously communicate both the employee's activities and his or her exposure to the danger of severe emotional harm. When the report makes that risk clear, § 7(1)'s mix of purposes favors the construction that the employer and board have received the requisite "written notice." If they wish, they are then able to make prompt inquiries into the veracity of the employee's account. The report's existence on file may also in itself alleviate the risk that the employee's eventual claim for benefits rests on a fabricated version of events. And the employee in this scenario has done everything that logically can be asked of him or her to convey the risk that he or she may later become disabled.

Id.[12]

This same logic applies here. The Petitioner's report detailed the gruesome scene she came upon. Moreso, the Raynham police department recognizes the toll that responding to scenes like this can have on its officers. Detailed police reports give the departments ample

PTSD, nothing indicates he notified the board in writing at any point about the Petitioner's injury.

[12] I acknowledge *Kurt K.* is under appeal with CRAB.

notice that an incident like the one here could cause, or aggravate, PTSD, which is why the department refers officers to CISM. Here, members of the CISM team were aware of the Petitioner's deteriorating mental health state and both reported it to the Chief and referred her to therapy. Because her incident report was filed within 90 days of the event, it is sufficient to provide the notice contemplated by § 7(1).

2. *Line of duty benefits (§ 111F), § 7(3)(a)*

Because she was in Group 4, the Petitioner was ineligible for workers compensation. Instead, she applied for line of duty benefits; she exchanged several documents with the department leading up to her application, and receipt of, line of duty benefits. Some, or all, of these documents including the application itself, also serve as a "record of such injury . . . on file in the official records of [an applicant's] department." G.L. c. 32, § 7(3)(a). The Board apparently agrees that a §111F application could serve as notice in some cases if it is "timely" and identifies the specific injury at issue; it argues that the §111F application here was not timely (11 months after the incident) and did not even identify the incidents that formed the basis of the claim.

On its face, the statute provides no time limits to when such a "record of injury" must be filed to satisfy § 7(3)(a). Nevertheless, some cases have placed an upper limit on § 7(3)(a) notice. In *Kane v. Worcester Reg. Ret. Bd.*, CR-14-052 (DALA Dec. 30, 2015), the member filed no notices, nor did he apply for § 111F benefits; the department was not made aware of the Petitioner's possible injury until eight years later when he spoke to his chief about having developed PTSD. In *Ledoux v. West Springfield Ret. Bd.*, CR-18-0459 (DALA Dec. 6, 2019), the Petitioner likewise did not file any notices; he did, however, receive § 111F benefits, but not

until six years after the date of the incident. In both these cases, DALA found these notices were simply too late under § 7(3)(a).

On the other hand, a doctor's report which later formed the basis for a § 111F application, filed five months after the incident, was timely. *Shea v. Marlborough Ret. Bd.*, CR-14-185, *22 (DALA Aug. 25, 2017). Additionally, DALA "has previously recognized that a record of receipt of Section 111F benefits can [also] be such an official record." *Id. citing Rosario v. Fall River Ret. Bd.*, CR-13-233, * 10-11 (DALA Apr. 15, 2016). Indeed, a "record of such injury" can be medical records, letters between a member and his employer, or correspondence from therapists to the employer. *Ciavola v. Lowell Ret. Bd.*, CR-13-380, *20 (DALA Jul. 17, 2015).

There were several official documents filed here that I consider timely under § 7(3)(a). The § 111F application was approved by a settlement agreement in December 2018, based on a doctor's report from October 2018, which came about when the Petitioner filed her § 111F application in August 2018. These documents all explained the Petitioner was claiming PTSD on account of a variety of incidents including the September 3, 2017 suicide.[13] The application was approved 15 months after the incident, the Doctor's report was submitted 13 months after the incident, and the application was filed 11 months after the incident.

The Board's argument that these records were too late under § 7(3)(a) is illogical. A disability application that does not apprise an employer of an injury for up to two years after the incident is sufficient notice. But according to the Board, a record that gives notice sooner—namely 15 months after the incident—is not. Under the Board's reasoning, had the Petitioner filed her disability application in August 2019, she could rely on the September 3, 2017 incident,

[13] There were other records provided to the department in addition to the § 111F application which might also serve as "official records" of the injury: the union's August 2018 letter and Dr. Poliziti's July 2018 fitness-for-duty evaluation report.

even if she had not provided any prior notice of it. But because she filed her application in mid-September 2019, she cannot rely on that same incident even though the department had been aware of it since no later than December 2018. The purpose of the notice requirement is to "alert a public employer in time to investigate the validity of an injury claim." *Shea, supra*, at *23. The various records in this case satisfy this purpose.

Many first responders are likely suffering from PTSD,[14] but not themselves aware of it for a variety of reasons.[15] Police departments recognize this more and more, thus the CISM program. There must be some flexibility in our expectations of how this phenomenon is reported. The Petitioner reported her injury as soon as it became apparent. Section 7(3)(a)'s lack of a specific timing requirement inherently allows some room for flexibility. What is "timely" will obviously involve a fact specific inquiry. In this case, given these circumstances, and considering the injury (PTSD), the timing of the Petitioner's notice no later than fifteen months after the incident satisfied § 7(3)(a).

C. Petitioner suffered a workplace injury

Having established the September 3, 2017 incident can be considered, the Petitioner easily meets her burden. The medical panel was unanimous that she was suffering from PTSD,

[14] Ms. Luiz testified that almost 37% of police officers had been diagnosed with PTSD, and even that was likely underreporting the exact amount. (Luiz testimony.)

[15] "Usually, someone is suffering from PTSD well before they are ever diagnosed with it. PTSD is an after-the-fact emotional reaction to traumatic incidents. It can take years for someone to recognize their symptoms are connected to prior trauma. Sometimes they do not have access to mental health counseling that could help them identify this sooner; sometimes, like the Petitioner, they also must overcome the fear of admitting this to others (and the consequences it may bring for their careers)." *Wayne W. v. Middlesex Cty. Ret. Sys.*, CR-21-0359, 2023 WL 5774616 (DALA Sep. 1, 2023).

likely caused by her exposure to trauma on the job (and not by any non-work-related incidents).[16] Other medical records, including Dr. Polizoti's various reports, as well as the Petitioner and Ms. Luiz's credible testimony, corroborate her diagnosis. The same evidence also supports the conclusion that the Petitioner's PTSD was work-related, caused (or aggravated) by the September 3, 2017 incident.

It is possible the Petitioner suffered from PTSD before becoming a full-time police officer, though I have my doubts. As detailed above, the record is less than clear on this point. Nevertheless, if the September, 2017 did not proximately cause her to develop PTSD—because she already carried the diagnosis—it was then an event that aggravated a pre-existing condition. *Wayne W, supra*. If she did have PTSD when she joined the force, she was able to perform her job up until March 2018, when the fallout of the September 3, 2017 incident overwhelmed her. At that point, she was unable to perform her job duties because of it.

CONCLUSION

Accordingly, the decision of the Bristol County Retirement Board denying the Petitioner's application for accidental disability benefits is hereby **reversed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate

[16] "The weight of authority holds that, although such opinions go beyond the statutory question of medical 'possibility,' they 'may . . . be considered . . . on the [ultimate] question of causality.'" *Christopher C. v. Boston Ret. Bd.*, CR-19-342 & 343, 2023 WL 3434934 (DALA May 5, 2023), *quoting Narducci v. CRAB*, 68 Mass. App. Ct. 127, 134-135 (2007).