COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Teri Giroux Stolpinski,
Petitioner

v. Docket No. CR-22-0127

Hampshire County Retirement Board,
Respondent

Appearance for Petitioner:

Margaret G. Shea, Esq.

Appearance for Respondent:

James H. Quirk, Esq.

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The petitioner appeals the decision by the Hampshire County Retirement Board to deny her application for accidental disability retirement. The petitioner was an education paraprofessional who was injured when she picked up a heavy bag of books at the end of the last class of the day. A regional medical panel unanimously rendered positive certificates on the issues of incapacity, permanence, and causation. And in the accompanying narratives, they opined that the injury was the actual cause of her disability.

The Board proffers numerous grounds for its denial. None of them are sound.

First, there is no merit to its argument that the petitioner was not disabled as of her last date of service. From the date of her injury until her separation from service, the petitioner was unable to perform the essential duties of her position.

Second, there is no merit to the Board's argument that the petitioner's injury did not occur in the manner she alleges.

Third, the Board's suggestion that the petitioner's disability was caused by the natural progression of a preexisting degenerative condition is inconsistent with the panelists' narrative opinions and

unsupported by any qualified medical opinion.

Fourth, the Board's argument that her injury was not sustained while in the performance of her duties is unavailing. The petitioner's workday had not yet concluded, she was wrapping up her classroom duties, and she was collecting work items – including textbooks and her students' Individualized Education Programs – so that she could return them to her home base classroom.

The Board's decision is reversed.

DECISION

The petitioner, Teri Giroux-Stolpinski, appeals the decision of the Hampshire County Retirement Board ("the Board") to deny her application for accidental disability retirement benefits.

On the first scheduled hearing date, July 27, 2023, which was held remotely via the WebEx videoconferencing platform, there was some preliminary discussions about exhibits, but no evidence was taken that day because one of the participants felt ill. On September 20, 2023, the rescheduled hearing date, I held a hearing via WebEx. Ms. Stolpinski and a former colleague, Edward Scagel, testified on her behalf. Mary Baronas, the Board's Administrator, testified for the Board. I admitted exhibits lettered A-V and exhibits the parties designated as "Judicial Exhibit A" and "Judicial Exhibit B" into evidence.

Post-hearing, I admitted two additional documents proposed by the Board into evidence, Exhibit W and Exhibit X.

I treat facts agreed to by the parties in their Joint Pre-Hearing Memorandum as stipulations and will cite them by paragraph number as "Stip. __."

In January 2025, the parties filed post-hearing briefs.

FINDINGS OF FACT

Based on the evidence presented by the parties, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. Ms. Stolpinski worked as a paraprofessional for the Hampshire Regional School District. (Stip. 1). Her workday was 7:35 am to 2:35 pm. (Stolpinski Test.).

2. Ms. Stolpinski worked with students on Individualized Education Programs. She accompanied them to their classes and assisted them. She would also assist them in a guided academics class, akin to a study hall. (Stolpinski Test.).

3. Ms. Stolpinski carried a nylon bag that she would load up every morning with the items that she would need for that particular day, such as textbooks and the students' Individualized Education Programs. Some items, like the textbooks for the history classes, were particularly heavy. Different items were needed on different days. Ms. Stolpinski would leave her bag and work materials at her home base classroom at the end of the day. (Stolpinski Test.).

4. On October 29, 2015, Ms. Stolpinski was working with students in a ninth-grade world history class, which was the last class of the day. Ms. Stolpinski was assisting six to seven students in that class. That day's classroom assignment involved breaking into groups. Ms. Stolpinski was seated in a student desk chair that had a tablet arm on one side and was open on the other. Ms. Stolpinski's students positioned their seats around hers. (Stolpinski Test.).

5. Ms. Stolpinski had twisted around in her seat to face some of the students. Around 2:10 pm, the students began packing up their bags in anticipation of the end of class. Ms. Stolpinski turned back in her seat and felt a cold sensation in her back and heard some sort

of sound. The students asked her what was wrong. She replied that she was "okay." (Stolpinski Test.).

6. The students started moving their seats away. The class bell rang around 2:15 pm. Ms. Stolpinski grabbed her bag and stood up. She felt a pop in her back and a sensation go through her back and down her leg. She began to have painful back spasms. (Stolpinski Test.).

7. Ms. Stolpinski attempted to carry the bag up the stairs so she could return it to her home base classroom, where she would leave it after the school day, but she struggled to make it up the stairs, so she asked a student to bring the bag to her home base classroom for her. (Stolpinski Test.).

8. The following day, Ms. Stolpinski saw Dr. Elizabeth Armstrong. Dr. Armstrong reported that Ms. Stolpinski complained of having had back pain for two days, positional pain with bending and lifting, and radiation down the legs. According to Dr. Armstrong, Ms. Stolpinski told her that what precipitated this pain was that she "sat in a twisted position while working at kid's desks at school, [and] when she stood up her back went into spasms." Dr. Armstrong noted that Ms. Stolpinski had a history of "recurrent self-limited low back pain." Dr. Armstrong's office note makes no mention of the fact that Ms. Stolpinski had grabbed a bag filled with books. (Exhibit A).

9. At some point in the fall of 2015, Ms. Stolpinski had told her colleague, Edward Scagel, that she was injured while picking up a bag of books. (Scagel Test.).

10. Ms. Stolpinski did not provide a written notice of injury to her employer or to the Board. (Stolpinski Test.; Baronas Test.).

11. Although she did not provide written notice of her injury, she told individuals at her school, including the principal, about it. (Stolpinski Test.).

12. Ms. Stolpinski was out of work for several days. When she returned, she was able to resume only a part-time schedule because she could perform the sitting and standing required by her job for only a few hours before it became too painful for her back. (Stolpinski Test.; Exhibit W; Exhibit X).

13. While at work, Ms. Stolpinski was unable to carry her bag of work items and had to retrieve the items she needed for each class individually, which made her late for classes. Her work required her to lift fifty pounds, but she was able to lift only about 20 pounds. (Stolpinski Test.; Exhibit N; Exhibits V-X).

14. Ms. Stolpinski missed a great deal of work because of multiple spine surgeries she underwent in an ultimately unsuccessful attempt to address her back pain. (Stolpinski Test.; Exhibit X).

15. Ms. Stolpinski used up all her sick time, drew from the sick leave bank, and eventually took leave under the Family and Medical Leave Act. Ms. Stolpinski was at some point given the option of becoming a regular part-time employee, which option Ms. Stolpinski declined. At another point, the school principal put her on an unpaid leave of absence. (Stolpinski Test.; Exhibit X).

16. Ms. Stolpinski stopped performing work duties in June 2017, when the school year ended. (Stolpinski Test.; Baronas Test.; Exhibit X).

17. Ms. Stolpinski was terminated in September 2017 because she was not able to work full days, and she had declined to become a regular part-time employee. (Stolpinski Test.; Baronas Test.; Exhibit X).

18. Ms. Stolpinski applied for worker's compensation benefits in June 2017. (Stolpinski Test.).

19. On September 9, 2017, Ms. Stolpinski was examined by an independent medical examiner, Dr. James Nairus, in connection with her application for worker's compensation. According to Dr. Nairus, Ms. Stolpinski reported that "she was sitting at a student's desk school desk when she stood up with a bag of books and developed the acute onset of lower back pain." Dr. Nairus diagnosed Ms. Stolpinski with "Left-sided L4-5 disc herniation for which she has subsequently undergone three surgical interventions." Dr. Nairus noted "a prior history of back problems with recurrent self-limited episodes of lower back pain in the past" and also stated that Ms. Stolpinski "admitted to having some previous occasional lower back pain prior to her work injury on October 29, 2015, but claims that she never had any radiating symptoms into her left leg prior to that work injury." (Exhibit N).

20. Although Dr. Nairus observed that Ms. Stolpinski did have a preexisting degenerative disc condition and spondylosis in her lumbar spine, he opined that her October 29, 2015 injury was a major contributing cause of her disability. (Exhibit N).

21. On December 8, 2017, Administrative Judge Steven Rose of the Department of Industrial Accidents awarded Ms. Stolpinski workers' compensation benefits. He issued an "Order of Payment § 34 and § 35" for periods of total incapacity (§ 34) and partial incapacity (§ 35) connected with her injury on October 29, 2015. (Judicial Exhibit B).

22. Ms. Stolpinski applied for accidental disability retirement on July 3, 2018. She stated that as a result of her work injury on October 29, 2015, "I have severe nerve damage, arthritis and degenerative disc disease. I have narrowing of the neural foramen with nerve root involvement and significant nerve root impingement." She declared that she is unable to sit or stand for any length of time or lift more than a few pounds. (Exhibit W).

23. On August 1, 2018, Ms. Stolpinski was examined by Dr. Charles Kenny in connection with the insurer's appeal of the worker's compensation benefits awarded on December 8, 2017. He opined that Ms. Stolpinski was permanently disabled from performing her former occupation and that her injury on October 29, 2015 was "a major but not necessarily predominant cause" of her disability. (Exhibit R).

24. In a letter dated January 10, 2019, the Retirement Board notified Ms. Stolpinski that it had voted to deny her application for accidental disability retirement benefits without convening a medical panel. The Board provided the following reasons:

> Ms. Giroux-Stolpinski has failed to meet conditions for allowance of accidental disability retirement under G.L. c. 32, § 7(1) & § 7(3)(a). As a matter of law, Ms. Giroux-Stolpinski is precluded from award based on injury occurring prior to August 9, 2016. She also failed to provide substantial evidence that she suffered a personal injury occurring as [a] result of and while in performance of duties.

(*Stolpinski v. Hampshire County Ret. Bd.*, CR-19-0038 (Div. Admin. Law App. May 14, 2021), Judicial Exhibit B).

25. Ms. Stolpinski appealed the denial to this Division. In that appeal, CR-19-0038, the parties agreed to submit the matter on the papers. The Board filed a motion for summary decision, arguing that she "failed to present 'substantial evidence' that she suffered a work-

related injury and that the injury she alleges may not be considered because it occurred too long before she filed her disability retirement application." (*Stolpinski, supra*, Judicial Exhibit B).

26. On May 14, 2021, First Magistrate James Rooney denied the motion for summary decision, concluding that Ms. Stolpinski had made out a prima facie case that she had been injured during and while in the performance of her duties. He also concluded that although Ms. Stolpinski had not provided notice of her injury to her employer, her claim was not barred by the notice provisions of G.L. c. 32, § 7(3), because she had been awarded merits-based worker's compensation benefits. First Magistrate Rooney remanded the matter to Board so that Ms. Stolpinski could be evaluated by a medical panel. (*Stolpinski*, *supra*, Judicial Exhibit B).

27. In July 2021, Ms. Stolpinski was examined by three separate Regional Medical Panel physicians: Marc Linson, M.D.; John Goldberg, M.D.; and Jay Ellis, M.D. All three rendered positive opinions as to disability, permanence, and causation. (Exhibits T-V).

28. Dr. Linson describes the injurious event as follows: "lifting a 40-pound bag of books at work and developing a pop in her back followed by pain down her left leg."[1] Dr. Linson noted that Ms. Stolpinski had "[y]ears ago" pulled "her back and recovered without sequalae," adding that there is "no prior history of sciatica or similar problems to what she is experiencing now before the October 2015 work injury." Dr. Linson opined that Ms. Stolpinski is permanently disabled and that "this disability is the result of a work-related incident/accident as described." (Exhibit T).

[1] Dr. Linson observes that Dr. Armstrong's office note does not mention that Ms. Stolpinski had been lifting a heavy bag at the time of her injury. (Exhibit T).

29. Dr. Golberg states that Ms. Stolpinski sustained an injury while "lifting a container of books when she felt the popping sensation in her back and developed sudden pain in her back [and] in her left leg." Dr. Goldberg noted a history of "similar injuries before this without any sciatic symptoms (prior to the October 29, 2015 injury), and no long-term effects." He opined that the disability is "related directly by cause to the work accident as described." (Exhibit U).

30. Dr. Ellis stated that "Ms. Giroux-Stolpinski describes a history of her injury as occurring on October 29, 2015 when she was sitting in a classroom in a student-type desk with other students around her. When they all got up because the class ended, she rotated towards her right and lifted some books that were in a bag next to her. She said she immediately felt a pop in her back and was immediately in intense pain." Dr. Ellis stated that there "is no indication that she had prior back problems." Dr. Ellis opined that Ms. Stolpinski's "incapacity is such as might be the natur[al] and proximate result of the person[al] injury sustained or hazard undergone on account of which retirement is claimed." (Exhibit V).

31. On or about March 9, 2022, the Board again denied Ms. Stolpinski's application to retire for accidental disability. In its notice, the Board summarized the basis for its denial as follows: "Member was not in the performance of duties at the time the claimed incident occurred. No report of injury was filed with her employer nor with the Retirement Board. Member was not totally disabled on last day of work." (Exhibit X).

32. Ms. Stolpinski timely appealed this decision to DALA.

ANALYSIS

A. The State of the Record

Before discussing the substantive merits of this appeal, I first address certain gaps in the record.

First, some medical records that are discussed in the briefs, or are referenced in the exhibits, are not in evidence. For example, Ms. Stolpinski's application for accidental disability retirement lists Dr. Marian Stein, a neurologist, as one of the physicians who had treated her; and Ms. Baronas's testimony includes a reference to Dr. Stein, but I have not located any records from this physician in the parties' exhibits.

Second, the Board sought to introduce several potentially relevant non-medical documents nearly one month after the hearing.[2] Ms. Stolpinski objected to all but one of those proposed exhibits. I declined to admit these belatedly proposed exhibits, with the exception of the Board's March 9, 2022 denial notice (Exhibit X). Another exhibit, Exhibit W, was admitted post-hearing alongside Exhibit X (without objection), but that exhibit had been identified, albeit not filed prior to the hearing, and had been admitted *de bene* at the hearing.

The First Pre-Hearing Order, dated July 7, 2022, required the parties to list and furnish both the agreed exhibits as well as the parties' respective non-agreed exhibits. It was the obligation of both parties to propose and provide copies of the documents they considered relevant. Although Ms. Stolpinski bears the burden of proof, *Lisbon v. Contrib. Ret. App. Bd*., 41 Mass. App. Ct. 246, 255 (1996), my determination of whether she has discharged that burden

[2] In its portion of the pre-hearing memorandum, the Board did state that some documents were missing, but it did not identify them by name, only by their respective exhibit numbers from the earlier appeal, CR-19-0038. The exhibits were generally discussed at both the July 23, 2023 and September 20, 2023 hearing dates, but the Board did not, on either of those dates, provide the missing documents or identify them by name, with the exception of the application for accidental disability retirement.

must be based on the admitted record, and not on documents outside the record that the parties could have, but did not, timely propose.

B. The Merits

I turn now to the substance of this appeal. G.L. c. 32, § 7(1), allows for accidental disability retirement, provided that a qualified member (1) "is unable to perform the essential duties of [her] job" and (2) "such inability is likely to be permanent before attaining the maximum age for [her]group," (3) "by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [her] duties at some definite place and at some definite time." Moreover, the "pertinent medical problem is required to have 'matured,' i.e., to have become disabling, while the applicant was still a 'member in service."' *Walsh v. Malden Ret. Bd.*, CR-19-517, 2024 WL 215930, at *2 (Div. Admin. Law App. Jan. 12, 2024) (quoting *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164-165 (2023)).

The Board's arguments in support of its decision to deny Ms. Stolpinski accidental disability retirement benefits are disjointed and sometimes difficult to follow, but for purposes of this decision the main arguments (inclusive of various subsidiary and ancillary arguments) can be roughly organized as follows: (1) Ms. Stolpinski was not disabled as of her last day of work; (2) her injury did not occur in the manner she alleges; (3) her injury did not cause her disability; and (4) the injury was not suffered as a result of, or in the performance of, Ms. Stolpinski's work duties. I discuss these arguments in turn.

1. The Board's arguments regarding when Ms. Stolpinski became disabled.

The Board's first argument is that Ms. Stolpinski was "not totally disabled on [her] last day of work." (Exhibit X).[3] The Board's argument appears to turn on the fact that Ms. Stolpinski was able to return to her job as a paraprofessional and remained in the position for nearly one year. The Board's argument is unsound.

First, the Board's suggestion that Ms. Stolpinski was required to have been disabled as of the last day on which she performed work duties is foreclosed by *Hollup v. Worcester Ret. Bd.*, which clarified that the relevant standard is not whether the member was still performing work responsibilities when he or she became disabled, but instead whether the individual was still a "member in service." 103 Mass. App. Ct. at 164. Ms. Stolpinski was a member in service until her employment was terminated.[4] The question then becomes whether Ms. Stolpinski became disabled before her termination.

An individual is disabled for purposes of the statute if she "is unable to perform the essential duties of [her] job." G.L. c. 32, § 7(1). From her return to work in early November 2015 to her termination in September 2017, Ms. Stolpinski was unable to complete a full day of work because her back could not tolerate the periods of sitting and standing required by her

[3] The use of the modifier "totally" may be a vestigial reference to an earlier version of Chapter 32. In 1996, the Legislature amended the statute and, among other changes, replaced the phrase "becomes totally and permanently incapacitated for further duty" with "is unable to perform the essential of his job and that such inability is likely to be permanent." St.1996, c. 306, § 14, approved Aug. 9, 1996.

[4] Employees remain members in service until their death or prior separation from service for reasons such as termination or retirement. G.L. c. 32, § 3(1)(i). Certain types of unpaid leaves of absence constitute a separation from service, but Ms. Stolpinski's period of unpaid leave was not one of those types.

position and because she was unable to lift more than twenty pounds. The fact that Ms. Stolpinski's employer was prepared to temporarily excuse Ms. Stolpinski from meeting the requirements of her position does not mean that she was able to perform them. *Kelley v. Norwood Ret. Bd.*, CR-19-500, 2021 WL 9697053, at *4 (Div. Admin Law App. Nov. 19, 2021); *Emerson E. v. State Bd. of Ret.*, CR-22-0312, 2024 WL 489466, at *8 (Div. Admin. Law App. Jan. 29, 2024). Accordingly, she was disabled prior to her separation from service.[5]

2. The Board's arguments regarding how the injury occurred.

The Board next argues that Ms. Stolpinski's injury did not occur in the manner she says it did, focusing principally on Ms. Stolpinski's statement that she was lifting a nylon bag at the time of her injury. The Board asserts that the nylon bag is not mentioned in the medical records until June 27, 2017, in a document written by Dr. Marian Stein, more than one and one-half years after the injury. (Post-Hearing Brief, at 4). The Board suggests that the detail about the nylon bag is thus a fabrication and therefore that the positive causation determinations by the medical panel are flawed to the extent their opinions rely upon it.

As noted above, I have not located a document by Dr. Stein in the record; it appears to be one of the medical records absent from the parties' exhibits. I will assume for the sake of the argument that the Board's statement about the first reference to the nylon bag is accurate.

[5] The Board makes no argument that Ms. Stolpinski is ineligible for accidental disability retirement benefits because she declined her employer's offer of part-time employment. Such an argument would have been unavailing because the part-time position would have certainly entailed a reduction in benefits. *See Foresta v. Contrib. Ret. App. Bd.*, 453 Mass. 669, 680-81 (2009) (holding that to preclude an employee's entitlement to accidental disability retirement benefits, the modified job duties, among other things, "must result in no loss of pay or other benefits").

But, with one exception (discussed below), the medical records in evidence prior to June 27, 2017 do not discuss how the injury occurred, so the omission of the nylon bag from these records is completely irrelevant. In other words, it is not the case that the nylon bag is conspicuously absent from multiple accounts of the injury, only to emerge for the first time nearly two years later.

The only pre-June 2017 medical record I have located in which the relevant events are described is Dr. Armstrong's October 30, 2015 office note. The question, therefore, is whether, based on the fact that Dr. Armstrong's brief office notes do not mention it, I conclude that Ms. Stolpinski fabricated or confabulated this detail. There are multiple reasons why Dr. Armstrong's office notes might not discuss the nylon bag. Ms. Stolpinski might not have been a clear reporter, for example, or it may have been a misstep on the part of Dr. Armstrong. I do not conclude that the nylon bag was unmentioned in the office notes because Ms. Stolpinski invented this detail at some later point in time. Among other reasons, I credit Ms. Stolpinski's testimony on this issue; and her former co-worker, Ed Scagel, credibly testified that Ms. Stolpinski told him in the fall of 2015 (that is, close in time to the injury) that she had been picking up a bag of books at the time of her injury.

In support of its contention that the injury did not occur in the manner alleged, the Board asserts that Ms. Stolpinski has made various statements calling her version of events into question. For example, according to Ms. Baronas, Ms. Stolpinski said she did not file a notice of injury because "she didn't realize that she had suffered an injury at work." I do not doubt that Ms. Baronas is faithfully relaying Ms. Stolpinski's words as she remembered and understood them, but having had the benefit of listening to and considering Ms. Stolpinski's and Ms.

Baronas's testimony, I do not believe they were communicating particularly clearly with one another. I consider it more likely that what Ms. Stolpinski meant to convey was that she initially "didn't even think of it as a work-related injury," which is what she testified to at the hearing and which is different from saying that she did not realize she had been injured at work.

Another example: the Board states that when Ms. Stolpinski was asked at the hearing why she filed for leave under the Family and Medical Leave Act ("FMLA"), she responded that the reason was, as the Board puts it, "her fear of discipline; no mention of the petitioner being out of work for a job-related injury." (Respondent's Post-Hearing Brief, at 3). The inference drawn by the Board – that perhaps Ms. Stolpinski was not actually out of work because of a job-related injury – is baseless. Ms. Stolpinski's statement about fear of discipline took place in the context of a broader discussion about the various absences she took *because of* her work-related injury. She did not have work absences because she sought protection under the FMLA; she sought protection under the FMLA because she had work absences.

I have considered the other statements cited by the Board in its post-hearing brief. To the extent I follow the Board's various assertions, I do not conclude that the statements identified by the Board undermine Ms. Stolpinski's account of her injury or her general credibility. I credit Ms. Stopinski's and Mr. Scagel's testimony and find that Ms. Stolpinski was injured while picking up her bag of books.

3. *The Board's argument that her injury on October 29, 2015 did not cause her disability.*

The Board's next argument is that even if Ms. Stolpinski had been injured on October 29, 2015, it did not cause her disability. The Board contends that her disability was instead the

result of a preexisting condition, which – at worst – was only temporarily exacerbated by her injury on October 29. *Cf. Rosemarie R. v. Amesbury Ret. Sys.*, CR-22-0590, 2024 WL 3101692, at *5 (Div. Admin. Law App. June 14, 2024) ("The causation requirement is not satisfied where preexisting conditions are responsible for the member's incapacity through their 'natural, cumulative, deteriorative effects.'") *(*quoting *Lisbon v. Contrib. Ret. App. Bd.*, 41 Mass. App. Ct. 246, 255 (1996)).

The Board's conclusion appears to be based on the fact that Ms. Stolpinski returned to work less than two weeks after her injury. (Respondent's Post-Hearing Memorandum, at 3). The Board overlooks the fact that it "is common sense that a member may try to remain at work but eventually determine that she is unable to do so" and that "an injury's impact may worsen over time." *Pease v. Worcester Regional Ret. Bd.*, CR-21-82, 2022 WL 19762164, at *4 (Div. Admin. Law App. Dec. 23, 2022) (citations omitted).

A more serious problem with the Board's argument is that, as noted above, Ms. Stolpinski may have returned to "work," but she never returned to the performance of the essential duties of her position.

Moreover, the Board has presented no evidence to support its assertion. By contrast, Drs. Goldberg and Linson both opined that the injury *did* cause her disability.[6] The function of a

[6] The Board asserts that Dr. Linson's and Dr. Goldberg's opinions that the workplace injury actually caused the disability (and not merely that it was "possible") were improper. The Board relies upon *Noone v. Contrib. Ret. App. Bd.*, 34 Mass. App. Ct. 756 (1993). *Noone* stated that a medical panel has no authority to "express an unqualified negative opinion as to causation" because the "local board is entitled to know, whether, in the opinion of the panel, there is a medical *possibility* that the causal relation exists." *Id.* at 762 (emphasis in original). A positive causation opinion stands on a different footing because it necessarily contains within it an opinion that the causal relationship is medically possible. *Kelley v. Contrib. Ret. App. Bd.*, 341

medical panel is to "determine medical questions which are beyond the common knowledge and experience of the local board (or Appeal Board)." *Malden Ret. Bd. v. Contrib. Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973). While "neither the retirement board nor DALA is required to reach the same medical conclusion as the medical panel, it must base any medical conclusion on evidence supported by proper expertise." *Thomson v. Mass. Teachers' Ret. Sys.*, CR-20-0340, 2023 WL 183536, at *11 (Div. Admin. Law App. Jan. 6, 2023) (citations omitted). In particular, because the medical "analysis of whether a member's disability results from a workplace accident or from a preexisting condition generally exceeds the scope of common knowledge" it must typically be guided by medical expertise rather than lay intuitions. *Rosemary R.*, *supra*.

Here, all three members of the medical panel had access to Ms. Stolpinski's medical records, and the two members who affirmatively opined that Ms. Stolpinski's injury caused her disability (not merely that it could have caused it), Drs. Linson and Goldberg, expressly reference Ms. Stolpinski's prior back issues, noting relevant differences between her prior and current back problems (such as lack of sciatic pain from the prior back issues).[7] By contrast, the Board does not identify *any* medical opinion that Ms. Stolpinski's disability represented the natural progression of a preexisting condition. Ms. Stolpinski's testimony regarding the injury, as well as

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Mass. 611, 615-16 (1961). The Appeals Court has "blessed [the] practice" of panelists offering their views on actual causation. *Hines v. Dukes County Ret. Sys.*, CR-18-0357, 2024 WL 4815148, at *3 (Mass. Div. Admin. Law App. Oct. 25, 2024) (citing *Narducci v. Contrib. Ret. App. Bd.*, 68 Mass. App. Ct. 127, 134-36 (2007)).

[7] It is true that Dr. Ellis stated (incorrectly) that there "is no indication that she had prior back problems," but that still leaves a majority of the medical panel taking into account Ms. Stolpinski's prior history and furnishing opinions that her workplace injury caused her disability.

the record of her doctor's appointment the day after her injury – provide further evidence of the cause of her injury.

For similar reasons, there is no merit to the Board's argument that Ms. Stolpinski is not entitled to accidental disability retirement benefits because her disability may have been the result of mere "wear and tear" caused by ordinary, everyday movements. (Respondent's Post-Hearing Brief, at 6, 7, 10, and 14 (citing *Adams v. Contrib. Ret. App. Bd.*, 414 Mass. 360 (1993)). The rule enunciated in the *Adams* decision – that "wear and tear" arising from common everyday movements is not "an identifiable condition that is not common and necessary to all or a great many occupations" – is inapplicable where the claimed disability arose because of "a specific incident or series of incidents at work." *See Steinberg v. State Bd. of Ret.*, CR-08-0171, at *8 (Contrib. Ret. App. Bd. March 3, 2011) (discussing the limitations of the rule enunciated in *Adams*). The Board proffers no qualified medical opinion that Ms. Stolpinski's condition arose because of wear and tear, as opposed to the specific incident on October 29.

4. *The Board's argument that Ms. Stolpinski's injuries were not sustained while in the performance of her duties.*

Next, the Board argues that Ms. Stolpinski is not entitled to accidental disability retirement benefits because her injury was not sustained in the performance of her work duties.

To be eligible for accidental disability retirement benefits, Ms. Stolpinski must have sustained her disabling injury "as a result of, and while in the performance of, [her] duties." G. L. c. 32, § 7 (1). The "as a result of" and "while in the performance of" requirements "are conjunctive." *Boston Ret. Bd. v. Contrib. Ret. App. Bd.*, 340 Mass. 109, 111 (1959). The fact that

an injury occurred at work, for instance, might suffice to establish that it was suffered "as a result" of the member's duties (insofar as the employee's duties required his or her presence at work), but that would not necessarily mean that the injury occurred while in "the actual performance of the duties that the employee has undertaken to perform on behalf of the public." *Damiano v. Contrib. Ret. App. Bd.*, 72 Mass. App. Ct. 259, 262 (2008).

In *Damiano*, for example, the principal case upon which the Board relies, a 911 dispatcher was injured when a roughhousing coworker put her in a headlock. The Appeals Court concluded that although the fact that the injury occurred at work may have satisfied the "as a result" requirement, she did not meet the "while in the performance of" requirement because she "sustained her injuries on account of an intervening fortuity unrelated to her job and while not actually engaged in the performance of her job." *Id.* at 264.

The determination "is a factual inquiry particular to each case," *Murphy v. Contrib. Ret. App. Bd.*, 463 Mass. 333, 348 (2012) (citation and internal quotation marks omitted), and rests on whether "it can be seen that the whole affair had its origin in the nature and conditions of the employment, so that the employment bore to it the relation of cause to effect." *Loura v. Taunton Ret. Bd.*, CR-13-186, 2021 WL 12297908, at *20 (Contrib. Ret. App. Bd. July 14, 2021) (citing *Jones v. Weymouth Ret. Bd.*, CR-04-181, at *5 (Contrib. Ret. App. Bd. Sept. 30, 2005)).

Here, the Board seems to argue that Ms. Stolpinski was not in the performance of her work duties when she was injured because the final class of the day was ending and, according to the Board, she was heading home. The Board's argument misses the mark.

First, Ms. Stolpinski's workday had not concluded at the time of her injury (her workday was from 7:35 am to 2:35 pm; the final class of the day concluded around 2:15 pm), and she

was collecting her bag to bring it upstairs to her home base classroom. Accordingly, to the extent the Board suggests that Ms. Stolpinski's workday was over and she was essentially on her way home, the Board is mistaken.

Moreover, the Board has not provided any support for the suggestion that "as soon as the last class of the day ends, no injury suffered by a classroom employee after that exact time can ever be the grounds for an award for accidental disability retirement benefits." *Stolpinski, supra*, at 10. And the Board has not cited – nor have I located – any case or decisional law supporting the more general proposition that an employee in the process of winding up a work task is no longer in the performance of his or her duties. The proposition is not only unsupported – it is implausible. Work duties include those actions that "the employment relationship clearly and reasonably would prompt the employer to expect and demand" such that the "employer would be predictably and appropriately dismayed by an employee's failure" to perform them. *Wilson v. Newton Ret. Sys.*, CR-24-0294, 2025 WL 689851, at *3 (Mass. Div. Admin. Law App. Feb. 21, 2025). Most employers would be predictably and understandably upset if their employees failed to responsibly wind up their work duties – by failing to properly stow work equipment or leaving a shared workspace in disarray, for example. And, in this case, Ms. Stolpinski's employer would be appropriately dismayed if Ms. Stolpinski had simply left textbooks and her students' IEPs in a bag in the middle of the classroom floor.

All told, this case stands in stark contrast with *Damiano*. Ms. Damiano was injured because of an "intervening fortuity unrelated to her job": the conduct of a co-worker that caused her injury "had nothing to do with the performance of her duties as a 911 dispatcher." *Damiano*, 72 Mass. App. Ct. at 264. And the injury's only connection to her duties was the fact

that she sustained it at work. *Id.* Here, however, it cannot be said that the only connection Ms. Stolpinski's injury had to her job duties was that it occurred at work or that the injury had nothing to do with the performance of her duties as a paraprofessional. Ms. Stolpinski was injured as a result of picking up a bag containing work materials – textbooks and her students' IEPs – so that she could return it to her home base classroom.

CONCLUSION AND ORDER

For the foregoing reasons, the Board's decision is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

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Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: November 21, 2025