

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

Louis A. Vasquez,
Petitioner

v.

Docket No. CR-24-0555

Boston Retirement System,
Respondent

Appearance for Petitioner:

Leigh A. Panettiere, Esq.

Appearance for Respondent:

Emerson R. Peña, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Member injured himself while on duty. Five-and-a-half years later, while he was on administrative leave, his injury became disabling. He is entitled to accidental disability retirement benefits.

DECISION

The petitioner, Louis A. Vasquez, appeals the denial of his application for accidental disability retirement benefits.

I held a hearing on September 16, 2025, which I recorded. Mr. Vasquez was the only witness. I admitted Exhibits 1 through 17, and 19 and 20, which are clearly marked in the record. (I did not admit proposed Exhibit 18 and retained the exhibit numbering.)

Both parties submitted post-hearing briefs in November 2025.

Findings of Fact

1. Mr. Vasquez was a Boston police officer. (Testimony)

2. On November 25, 2013, Mr. Vasquez was working a paid police detail when he tripped on a sewer shut-off valve casting, stumbled, and twisted his right knee. (Stipulation, Ex. 9)

3. Also on that date, Mr. Vasquez filed an incident report with the Boston Police Department (BPD). (Ex. 9)

4. Mr. Vasquez did not collect benefits under G.L. c. 41, § 111F for his knee injury. (Ex. 1)

5. Mr. Vasquez's injury of November 25, 2013 eventually disabled him, five-and-a-half years later. (Ex. 1)

6. During those five-and-a-half years, Mr. Vasquez experienced pain in and underwent treatment for his knee, including a right knee arthroscopy on January 20, 2014. On August 19, 2024, Mr. Vasquez's condition was diagnosed as post-surgery osteoarthritis. (Ex. 15, p. 9)

7. On September 24, 2014, Mr. Vasquez was cleared for light duty. On November 30, 2015, Mr. Vasquez returned to full duty without restrictions. (Ex. 15, p. 9)

8. On February 8, 2019, Mr. Vasquez was placed on administrative leave, from his assignment to provide building security at BPD headquarters, because of complaints that he had been arriving for work late and leaving early. (Ex. 15, p. 9; Ex. 20)

9. After his knee injury, Mr. Vasquez could no longer run for exercise. While on administrative leave, Mr. Vasquez rode his bicycle to maintain his health at the

recommendation of his doctor. He developed knee pain, which was diagnosed as severe arthritis. (Testimony)

10. Mr. Vasquez's bicycling did not worsen his knee's condition. (Ex. 19 (To Whom It May Concern Letter by Dr. Mark Berenson, Mr. Vasquez's treating physician))

11. On May 16, 2019, Mr. Vasquez walked into BPD headquarters to file what he called an "Injured Officer On-Duty, Re-Occurring Report." He wrote in part, referring to himself in the third person, that

on November 25th, 2013[,] while performing a paid detail[,] he sustained an injury to his right knee[,] resulting in a surgical procedure, then treatment for...two years. As of the last month or so[,]...his right knee has started to hurt badly and the left knee hurts as a result of compensating for the right one.

(Ex. 13) (I find as facts both that Mr. Vasquez filed the report and the content of the report.)

12. Mr. Vasquez was on administrative leave till he retired on May 10, 2024. (Testimony, stipulation)

13. Before he retired, on March 29, 2022, Mr. Vasquez applied for accidental disability retirement benefits. (Ex. 1)

14. When asked when and how he injured himself, Mr. Vasquez answered that on November 25, 2013, while performing traffic duty, he twisted his right knee. (Ex. 1)

15. When asked when he ceased to be able to perform all essential duties of his position, Mr. Vasquez answered May 16, 2019.

16. Attached to Mr. Vasquez's application was a medical note by Dr. Mark Berenson, dated May 29, 2019. The medical note stated that after a work-related injury, Mr. Vasquez was on light duty from September 20, 2014 until surgery on January 20, 2015. He returned to work but his knee occasionally troubled him. He conferred with Dr. Berenson because he was

experiencing increasing pain and discomfort. Dr. Berenson gave him a note to stay out of work for two to three weeks. (Ex. 1) (I find as facts both that Dr. Berenson wrote the medical note and the content of the note.)

17. Sometime in 2023 before February 8, 2023 (see date stamp, Ex. 2), Dr. Berenson signed a Physician's Statement. The statement is handwritten and is illegible in many places. (Ex. 2)

18. Dr. Berenson stated that Mr. Vasquez's injury had occurred on June 25, 2019. When asked when Mr. Vasquez was last able to perform his essential duties, Dr. Berenson did not answer. (Ex. 2)

19. The Employer's Statement states that the incident related to Mr. Vasquez's job duties occurred on May 16, 2019. When asked for a description of the incident, the statement referred to an incident report, which was not attached (Ex. 4, p. 5), but which presumably was the report that is Exhibit 13.¹

20. On November 2, 2022, Mr. Vasquez had a total right knee replacement. (*E.g.*, Ex. 15, p. 10)

21. On April 20, 2023, Dr. Louis Bley, an orthopedist and medical panelist, opined that Mr. Vasquez was physically incapable of performing the essential duties of his job; that his incapacity was likely to be permanent; and that his incapacity was such as might be the natural and proximate result of the personal injury. (Ex. 7)

22. In his narrative, Dr. Bley stated:

¹ Mr. Vasquez claims that the Employer's Statement asserts that (1) the May 16, 2019 incident aggravated the disability and (2) he is entitled to accidental disability retirement benefits. (Pet. Br. 8) I do not see these assertions. (Ex. 4)

In 2019, he began to have Left knee pain due to compensating for his right knee pain, and this is what prompted him to apply for disability.

(Ex. 7)

23. Dr. Bley also stated:

His disability post right knee replacement with extensor lag is likely to be permanent as well his limited range of motion at this point. He otherwise will eventually need to undergo left total knee replacement and this would preclude him again from returning to additional work as a patrolman, which would require physical activities or running. In my opinion, his need for knee replacements is causally related to his previous work-injury for which he underwent arthroscopy and experienced subsequent degeneration of his right knee.

(Ex. 7)

24. In the “Physical Examination” part of his narrative, Dr. Bley described Mr. Vasquez’s left knee almost as much as his right knee. (Ex. 7)

25. On May 11, 2023, Dr. B. Eugene E. Brady, an orthopedist and medical panelist, opined that Mr. Vasquez was physically incapable of performing the essential duties of his job; that his incapacity was likely to be permanent; and that his incapacity was such as might be the natural and proximate result of the personal injury. (Ex. 5)

26. In his narrative, Dr. Brady noted that Mr. Vasquez had been out of work since May 16, 2019 because of problems with his right knee, and that on November 2, 2022, Mr. Vasquez had undergone a right total knee replacement. (Ex. 5)

27. Dr. Brady further opined that Mr. Vasquez was disabled and unable to return to work as of May 16, 2019, due to pain from his right knee injury. He also opined that Mr. Vasquez’s right knee replacement was “secondary to his work injury” in 2013 “and the progressive development of arthritis in the right knee.” (Ex. 5)

28. On May 18, 2023, Dr. Mark Linson, an orthopedist and medical panelist opined that Mr. Vasquez was physically incapable of performing the essential duties of his job; that his incapacity was likely to be permanent; and that his incapacity was such as might be the natural and proximate result of the personal injury. (Ex. 6)

29. In his narrative, Dr. Linson further opined that “this is to a certain degree a work-related problem,” and that “osteoarthritis was preexisting...although it was likely aggravated by Mr. Vasquez’s work.” He continued:

That being said, I do feel the accident that occurred on November 25, 2013 does qualify for the aggravation of a preexisting condition standard. Prior to this accident, he was working without difficulty and after this accident, he developed a worsening of his symptoms[,] resulting in the need for surgery.

...[T]his disability is related to the work-related incident...in 2013 and its sequelae....

(Ex. 6)

30. On September 29, 2023, the Boston Police Department changed Mr. Vasquez’s status from administrative leave to administrative desk duty. Mr. Vasquez did not return to his position. (Ex. 15, p. 10)

31. On August 23, 2024, BRS denied Mr. Vasquez’s application for accidental disability retirement benefits, stating that he had not proved that he had been injured as a result of and in the performance of his duties. (Ex. 15)

32. Also on August 23, 2024, Mr. Vasquez timely appealed. (Ex. 16)

Discussion

Vest and its aftermath

The case of *Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157 (2023) in effect called

for a re-examination of an earlier case, *Vest v. Contributory Retirement Appeal Board*, 41 Mass. App. Ct. 191 (1996). Re-examining *Vest*, a case about accidental disability, can be confusing; it can be difficult to discern what distinctions in severity of an injury it intended to make. *Vest* referred to:

- a “work related illness or injury” “*manifest[ing]* itself during employment, albeit not so grave as to be incapacitating.” *Id.* at 192 (emphasis added)
- an “incapacity that does not *manifest* itself until after...government service.” *Id.* at 193 (emphasis added).
- a “*manifestation* of disabling disability.” *Id.* at 193 (emphasis added).
- a “disability bec[oming] *apparent*.” *Id.* at 192 (emphasis added).
- “the seed of incapacitating disease.” *Id.* at 193.
- “conditions that were *nascent but not disabling* while in government service.” *Id.* at 194 (emphasis added).
- “retirement benefits which *matured* while still on active service.” *Id.* at 194 (emphasis added).
- “after termination of government service...a subsequently *matured* disability” and, in the same sentence “an *established* disability.” *Id.* at 194 (emphasis added).

In decisions by the Contributory Retirement Appeal Board (CRAB) and the Division of Administrative Law Appeals (DALA), *Vest* came to

mean that an employee may not receive disability retirement benefits unless the employee establishes that he or she was permanently unable to perform the essential duties of his or her position as of the last day the employee actually performed those duties.

Hollup v. Worcester Ret. Bd., 103 Mass. App. Ct. 157, 158 (2023). However, to construe *Vest* that way was erroneous. *Id.* See also *id.* at 164-65.

Hollup clarified what *Vest* had *not* said, but not precisely what *Vest* *did* say. DALA has interpreted *Vest* and *Hollup*, especially what *Vest* meant by a maturing disability, as follows: For an applicant to be eligible for accidental disability retirement benefits, an injury or illness must have matured, “i.e., to have become disabling, while the applicant was still” a member of a retirement system in service. *Thomas Walsh v. Malden Retirement Board*, CR-19-517, 2024 WL 215930 (DALA Jan. 12, 2024).

The injury or illness cannot have matured after the member has retired; that remains true from *Vest* and after *Hollup*. While the date of disability cannot be after a member’s retirement, under *Vest* as clarified by *Hollup*, the date of disability does not need to be the last date that a member could perform the essential duties of the job or a member’s last day of work.

Mr. Vasquez’s work-related injury of November 25, 2013 became disabling on May 16, 2019 while he was a member in service. Thus, he is eligible for accidental disability retirement benefits.

In the joint prehearing memorandum, BRS argued that Mr. Vasquez’s injury on May 16, 2019 was not related to his job and did not occur in the course of his job. Rather, BRS argued, the injury occurred while he was exercising. (Prehearing memorandum 12, 13) However, in its closing brief, BRS did not so argue and has apparently abandoned this argument.

In the event that this issue arises again, as in a subsequent tribunal, I note three things. One, Mr. Vasquez does not allege that he was injured on May 16, 2019. Rather, he argues that

he became disabled on that date. Two, Mr. Vasquez's injury of November 25, 2013 did not become disabling as a result of his bicycling. So opined Dr. Berenson. (Ex. 19) None of the medical panelists mentioned Mr. Vasquez's bicycling, meaning that impartial doctors did not weigh in on the issue. Three, even if his bicycling disabled him, Mr. Vasquez is still eligible for accidental disability retirement benefits. As DALA has said:

Where an accidental disability retirement applicant shows that progression of neck and back symptoms was caused by physical therapy for the work injury, "this would create an unbroken chain of causation between the work injury and the present disability."

Daniel J. Murphy v. Andover Contributory Retirement Board, CR-99-558 (DALA July 21, 2000)

(citation omitted). Mr. Vasquez was not engaged in physical therapy when he bicycled – and to call it "physician-approved physical therapy," as Mr. Vasquez does (Pet. Br. 10), is an overstatement – but his doctor did recommend that he bicycle (Ex. 19), and the principle of *Murphy* applies.

Accidental disability during administrative leave

BRS argues that Mr. Vasquez is not eligible for accidental disability retirement benefits because he was on administrative leave when he applied, citing, *e.g.*, *Arruda v. Taunton Retirement Board*, CR-14-47 (DALA Aug. 3, 2018); *Tanger v. Weymouth Retirement Board*, CR-12-658 (DALA Aug. 28, 2015); and *Lauren Forrest v. Weymouth Retirement Board*, CR-12-690 (CRAB April 13, 2015) (Resp. Br. unnumbered pages). However, *Arruda* relies on the interpretation of *Vest* that *Hollup* negated. *Tanger*, which I decided, did not unequivocally stand for the proposition for which BRS cites it; I wrote that

the petitioner was on administrative leave on his last day of work and not disabled, and he injured himself at home, not at work.

And in *Forrest*, CRAB ruled:

We accordingly *do not adopt* that portion of the magistrate's decision which *suggests* that a disability arising during a period of paid administrative leave may support a disability retirement application.

(Emphasis added.) That does not mean CRAB ruled that a member on administrative leave is ineligible for accidental disability retirement benefits.

In any event, any such proposition that a member on administrative leave is not eligible for accidental disability retirement benefits did not survive *Hollup*. That case, *Hollup*, simply stands for the proposition that a member whose work-related injury becomes disabling while in service is eligible for accidental disability retirement benefits. That formulation does not include an exception for members on administrative leave.

Dr. Bley's opinion

Dr. Bley's positive opinion of Mr. Vasquez's disability is, on closer examination, equivocal.

Dr. Bley, a panelist, stated in his narrative about Mr. Vasquez:

In 2019, he began to have Left knee pain due to compensating for his right knee pain, and this is what prompted him to apply for disability.

(Ex. 7) That is incorrect. Neither Mr. Vasquez nor his treating physician mentioned his left knee in his application for accidental disability retirement benefits. (Exs. 1, 2)

Dr. Bley also wrote:

His disability post right knee replacement with extensor lag is likely to be permanent as well his limited range of motion at this point. He otherwise will eventually need to undergo left total knee replacement and this would preclude him again from returning to additional work as a patrolman, which would require physical activities or running. In my opinion, his need for knee replacements is causally related to his previous work-injury for which he underwent arthroscopy and experienced subsequent degeneration of his right knee.

(Ex. 7) It is unclear what “otherwise” means here. Dr. Bley twice referred to Mr. Vasquez needing to totally replace his left knee in the future and spent almost as much space describing Mr. Vasquez’s left knee as his right – yet Mr. Vasquez did not base his application for accidental disability retirement benefits on his left knee. In addition, Dr. Bley predicted that Mr. Vasquez’s future knee replacement would disable him, whereas G.L. c. 32, §7 governs the current disability of a retirement system’s member, not disability that has not yet matured.

In any event, Dr. Bley’s opinion is probably sufficiently based on Mr. Vasquez’s right knee to entail a positive medical report, and Dr. Bley’s two co-panelists issued positive reports, which constitute a majority, even without Dr. Bley’s report. G.L. c. 32, § 7 (referring to “a majority of the physicians on such medical panel”).

Physician’s statement

Dr. Berenson’s physician’s statement asserted that Mr. Vasquez’s injury had occurred on June 25, 2019, a date that does not apparently occur elsewhere in the record. When asked when Mr. Vasquez was last able to perform his essential duties, Dr. Berenson did not answer. (Ex. 2) Nonetheless, Mr. Vasquez’s application as a whole, including his assertions that he was injured on November 25, 2013 and ceased being able to perform the essential duties of his position on May 16, 2019, meets the statutory requirement that he allege an injury “at some definite time.” G.L. c. 32, § 7.

An application for accidental disability retirement benefits cannot advance without a treating physician’s statement. G.L. c. 32, §8(1); 860 CMR 10.06.1.b. And the condition(s) on an application for accidental disability retirement benefits must match the condition(s) on a

treating physician's statement. *David Vigneaux v. Essex Regional Retirement Board*, CR-21-0413 (DALA Feb. 16, 2024).

A treating physician's statement is invalid if it does not support the petitioner's claim in the application. *E.g.*, *Timothy Leonard v. Essex Regional Retirement Board*, CR-16-506 (DALA 2018).” *Joseph Keegan v. Quincy Retirement Board*, CR-19-0312 (DALA Jan. 13, 2023). Dr. Berenson's treating physician's statement is deficient, but not enough to be invalid and to invalidate Mr. Vasquez's application.

Other issues

A police officer who is injured while working a paid detail, such as Mr. Vasquez was, is eligible for accidental disability retirement benefits. *Boston Police Department v. Boston Retirement Board*, CR-11-397 (CRAB Aug. 9, 2016).

The deadline for an application for accidental disability retirement benefits is generally within two years of the alleged disabling injury. G.L. c. 32, § 7(1). One exception is for (A) a member in Groups 2, 3, or 4 who is not eligible for workers' compensation (B) “if a record of such injury sustained...is on file in the official records of his department.” G.L. c. 32, § 7(3)(a).

This exception applies to Mr. Vasquez because (A) police officers are generally in Group 4, see *Gaw v. Contributory Retirement Appeal Board*, 4 Mass. App. Ct. 250, 253 (1976); *Isaac Perry and Adam Murphy v. Plymouth County Retirement Association*, CR-20-0132, CR-20-0133, 2022 WL 18398911 (DALA Dec. 2, 2022), and (B) he filed two incident reports about his injury.

The bottom line

Mr. Vasquez's injury matured, that is, became disabling, while Mr. Vasquez was still a member in service. *Walsh v. Malden Retirement Board, supra*. Thus, he is entitled to accidental disability retirement benefits.

Conclusion and Order

The Boston Retirement System's denial of Mr. Vasquez's application for accidental disability retirement benefits is reversed.

Dated: June 26, 2026

/s/ Kenneth Bresler

Kenneth Bresler
Administrative Magistrate
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