

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**Matthew Verga,**  
Petitioner

v.

Docket No. CR-21-0282

**Gloucester Retirement Board and  
Public Employees' Retirement Administration  
Commission,**  
Respondents

**Appearance for Petitioner:**

Brian McCormick, Esq.

**Appearance for Respondent Gloucester Retirement Board:**

Gerald McDonough, Esq.

**Appearance for Respondent Public Employees' Retirement Administration Commission:**

Felicia McGinniss, Esq.

**Administrative Magistrate:**

Melinda E. Troy, Esq.

**SUMMARY OF DECISION**

The Respondent's decision to deny the Petitioner's application for accidental disability benefits pursuant to G.L. c. 32, § 7, is affirmed. The Petitioner has not proven that he sustained a compensable personal injury.

**DECISION**

This appeal concerns the determination by the Respondent, the Gloucester Retirement Board ("GRB") that the Petitioner, Matthew Verga ("the Petitioner" or "Mr. Verga") is not

entitled to accidental disability retirement. For the reasons set forth below, I am affirming the Respondent's decision.

### **PROCEDURAL BACKGROUND**

The Petitioner applied for accidental disability benefits pursuant to G.L. c. 32, § 7. When his application was originally submitted, the GRB held a hearing before its governing board of directors to determine what injuries or events were the basis for Mr. Verga's application. The GRB sought to submit the transcript of this hearing to the members of the Regional Medical Panel ("Panel") who examined Mr. Verga to determine his eligibility for benefits. The Public Employees Retirement Administration Commission ("PERAC") denied that request, and the GRB appealed. In *Gloucester Retirement Board v. Public Employees' Retirement Administration Commission*, CR-17-1059 (CRAB Oct. 30, 2020), CRAB upheld a decision by the Division of Administrative Law Appeals ("DALA") ordering PERAC to provide the transcript to the Panel when it examined Mr. Verga, and it did. Following Mr. Verga's medical examination, a majority of the members of the Panel supported his application. The third member of the Panel found that Mr. Verga was disabled and his condition was permanent, but that it was not causally related to any incident(s) occurring while he worked at the Gloucester Public Schools ("GPS").

Based on the report by the majority of the Panel, the GRB initially approved Mr. Verga's application. However, when the GRB submitted the application to PERAC for final approval pursuant to G.L. c. 32, § 21(1)(d), PERAC remanded the application to the GRB, finding that its approval was not based on substantial evidence. Thereafter, the GRB reconsidered its prior approval and denied the application. The Petitioner appealed that decision to DALA. DALA joined PERAC as a party to this proceeding.

I held a virtual hearing on the merits of Mr. Verga's application via the Webex platform on December 13, 2023, which I digitally recorded with the parties' consent. The Petitioner was the sole witness. After the hearing, the Petitioner and the GRB each submitted additional documentary exhibits, without objection. I have marked the parties' joint pre-hearing memorandum for identification as Pleading A. In May 2024, the parties submitted post-hearing memoranda, after which the record closed. I have marked the Petitioner's closing memorandum for identification as Pleading B. The Respondents submitted a joint written closing memorandum, which I have marked for identification as Pleading C. I admitted into evidence the 19 agreed-upon exhibits. I have included an exhibit list as an addendum to this decision.

### **FINDINGS OF FACT**

Based on the evidence presented by the parties and the uncontradicted statements of fact contained in the parties' written submissions, along with reasonable inferences drawn therefrom, I make the following findings of fact:

1. The Petitioner was formerly employed as a custodian at the GPS. He began working there in November 1996. (Testimony; Exhibit 1.)
2. At various times during his career, from 1998 through 2014, Mr. Verga reported work-related injuries. (Exhibits 1 and 3.)
3. At the time of the events described below, he was working from 7:00 AM to 4:00 PM at an elementary school in Gloucester. (Testimony.)
4. His duties inside the school building included opening the school building in the morning, setting up and cleaning the student cafeteria/gym, and cleaning the school common areas, bathrooms, hallways and classrooms. (Testimony; Exhibits 1 and 3.)
5. In addition to working inside the building, Mr. Verga was required to pick up trash on

- the school property outside, and, if necessary, to shovel ice and snow in the winter after inclement weather. (Testimony; Exhibits 1 and 3.)
6. In December 2013, while he was shoveling, Mr. Verga felt a pain in what he thought was either his neck or shoulder and his “whole arm” felt numb. He continued to work and did not report the incident to GPS officials at that time because “you can’t report everything.” He cannot recall the date of that injury in December 2013. (Testimony.)
  7. When he testified at the DALA hearing, Mr. Verga claimed to have sustained “a doozy with the shoulder” in March 2014. He said he was shoveling again, and he felt a “pop” and felt shooting pain down his arm on the left side. (Testimony.)
  8. Mr. Verga did not recall the exact date that this injury occurred, but he believes it to be March 5, 2014, “maybe”. That was the last day that Mr. Verga worked at the GPS. (Testimony.)
  9. Weather data provided for March 5, 2014 shows that there was no measurable precipitation in Gloucester that day. (Exhibit 18.)
  10. Mr. Verga filed an “Employee First Report of Injury” on April 1, 2014. It states, “for the past several months I have been experiencing left shoulder pain since winter began. The pain has been nonstop [sic] so I went to my dr. He x-rayed then sent me to an orthopedic MRI. Repetitive motion.” (Exhibit 1.)
  11. Mr. Verga filed a second “Employee First Report of Injury” also on April 1, 2014. However, this notice does not mention any date of injury in March 2014. The Notice lists a date of injury only by the event, month and date, “snowstorm 12/13.” It describes the injury as occurring “from shoveling this winter I noticed the pain starting in left arm each time it snowed the pain got worse”. (Exhibit 1).

12. By application dated May 1, 2017, Mr. Verga applied for accidental disability retirement, citing as the basis therefor, “neck injury 2 discs replaced and plate added. Constant pain and numbness in hand and wrist. Shoulder and wrist surgery as well.” He claimed that his disability was the result of a personal injury, rather than a hazard undergone while working at the GPS. (Exhibit 1.)
13. His application did not provide specific dates of injury, instead noting that the “specific time” of the injury was “my entire career” and describing the incidents as “cumulative/repetitive trauma from work... as custodian.” (Exhibit 1.)
14. The only detail that Mr. Verga was able to provide was that his application was based on “years of cumulative repetitive, culminating w/heavy snow shoveling in winter 2013-2014.” When asked to describe what he was doing just prior to the time that he sustained his injury, Mr. Verga stated, “shoveling snow and snow blowing snowstorm at school.” (Exhibit 1; Testimony.)
15. On September 6, 2017, the GRB convened a special meeting to discuss Mr. Verga’s application. The purpose of the meeting was to determine whether to forward Mr. Verga’s application to a Regional Medical Panel to determine his eligibility for benefits pursuant to G.L. c. 32, § 7. (Exhibit 5.)
16. The GRB wanted to discern what the basis of Mr. Verga’s application was, and to determine what injuries he was alleging he had sustained while working at the GPS. (Exhibit 5.)
17. Mr. Verga informed the GRB that his application was based on injuries to his neck, left shoulder and wrist. He stated that the pain became such that it “wouldn’t go away” in December 2013 and that he was last able to perform the essential duties of

- his job on March 5, 2014. On that date, Mr. Verga felt he “just couldn’t do the job” because he was “just in too much pain.” (Exhibit 5.)
18. Mr. Verga was examined individually by the members of the Regional Medical Panel in December 2020. The Panel consisted of Vivek Shah, M.D., who specializes in orthopedics; Julian Fisher, M.D., who specializes in neurology; and Aaron Gardiner, M.D., who also specializes in orthopedics.
19. All three physicians found that Mr. Verga was physically incapable of performing his duties as a custodian and that his condition was permanent, which the parties do not dispute. (Exhibit 6.)
20. A majority of the Panel, Drs. Shah and Fisher, found that Mr. Verga’s condition was such as might be causally related to his position at GPS, and therefore answered “yes” to Question 3 on causation. (Exhibit 6.)
21. Dr. Gardiner did not find that Mr. Verga’s condition was causally related to his work at GPS. Consequently, he answered “no” to Question 3 on causation. (Exhibit 6.)
22. Initially, the GRB voted to approve Mr. Verga’s application, based on the opinion of the majority of the Panel members. (Exhibit 7.)
23. By letter dated May 21, 2021, PERAC remanded the application to the GRB, directing the GRB to make findings of fact addressing what specific injury Mr. Verga suffered, when it occurred, whether he had received Worker’s Compensation benefits as a result, and what duties he was performing when he was injured. (Exhibit 7.)
24. The GRB did not respond to PERAC’s correspondence. Instead, at its meeting held June 30, 2021, the GRB voted to deny the Petitioner’s application. In the notice that it sent to the Petitioner dated the following day, the GRB cited the PERAC remand as

the basis for its decision. (Exhibit 8.)

25. By letter dated July 7, 2021, the Petitioner filed a timely appeal of the GRB's decision. (Exhibit 17; Stipulation.)

## DISCUSSION

In order to qualify for accidental disability benefits, an applicant must show three things. These are: 1) that he is physically incapable of performing the essential duties of his position; 2) that his condition is likely to be permanent; and 3) that his disability is such as might be a natural and proximate result of a “personal injury” sustained or “hazard undergone” while performing his work duties. G.L. c. 32, § 7. The applicant bears the burden of proof to establish a causal nexus between an injury or hazard and his disability. *Campbell v. Contributory Retirement Appeal Board*, 17 Mass. App. Ct. 1018 (1984). In this case, there is no dispute that the Petitioner meets the first two criteria, that he is disabled and his condition is permanent. The focus then turns to the third criterion, causation.

There are two ways for an applicant such as Mr. Verga to prove causation. First, the applicant can claim that a disabling injury resulted from a specific incident or incidents. *Blanchette v. Contributory Retirement Appeal Board*, 20 Mass. App. Ct. 479, 485 (1985). Second, an applicant can claim that his disability was the result of the gradual deterioration of his physical condition.<sup>1</sup> *Id.* Under either theory, an applicant must show that his condition occurred “as a result of, and while in the performance of, his duties at some definite place and at some definite time.” G.L. c. 32, § 7. For an application based on a theory of gradual deterioration, an applicant may prove causation if he can demonstrate that his condition resulted from an

---

<sup>1</sup> An otherwise-qualifying applicant can also receive disability benefits based upon a mental or emotional condition. Mr. Verga makes no such claim, so this decision focuses on the requirements of an application based on a physical condition.

“identifiable condition” at work that is “not common and necessary to all or a great many occupations.” *Blanchette, supra* at 485. For the reasons discussed below, Mr. Verga cannot prevail under either theory. Consequently, he cannot meet his burden to show that his medical condition is causally related to his work as a custodian at GPS and, therefore, he is not entitled to accidental disability benefits.

#### **A. Specific Incident(s)**

Although his application states that he is applying for accidental disability benefits based on a “personal injury”, a closer review of the record shows that Mr. Verga does not base his application on any specific incidents. The application stated that the “specific time” of the injury Mr. Verga claimed as the basis for the application was “my entire career” and it described the incidents as “cumulative/repetitive trauma from work... as custodian”, not any specific injury. Through his testimony, Mr. Verga seemed to try to prove that he was basing his application on specific injuries in December 2013 and March 2014 that resulted from his required shoveling at work. However, those injuries were not stated on the application, and he cannot now amend his application retroactively to include an injury that was not originally stated in it. *Zajac v. State Board of Retirement*, CR-12-144 at \*4 (CRAB Aug. 15, 2015), *aff’d*, Mass. Sup. Ct. No. 1579CV00660 (Hampden Cty., Aug. 8, 2016); *Pomeroy v. Pittsfield Retirement Board*, CR-19-0080 and CR-19-0436 (DALA, Apr. 9, 2021). As such, Mr. Verga cannot rely on those alleged two dates of injury to establish that he is entitled to accidental disability benefits pursuant to G.L. c. 32, § 7.

Even if DALA could consider these specific incidents in evaluating whether Mr. Verga proved that his physical condition was related to his work at the GPS, the record does not show that these events occurred as Mr. Verga described. Mr. Verga admits that he did not report any



work-related injury in December 2013. In April 2014, when he filed an injury report that mentioned a December 2013 injury to his shoulder, he did not specify the date on which it occurred or specifically how it occurred. Also, though he claims to recall that he sustained a “doozy” of an injury while removing snow on March 5, 2014, his last day of work at the GPS, there was no measurable snow that day. Moreover, the injury reports that are in the record do not support his claim that he sustained an injury on March 5, 2014, because none of the injury reports state that date as a date of injury. Mr. Verga repeatedly testified that he could not remember what the specific dates of injury that he was relying upon were, largely due to the passage of time since the events had occurred. I credit Mr. Verga for being forthright in his testimony and admitting that his memory of events was unreliable. However, because he was unable to remember a specific date of injury, he did not meet his burden and prove when the alleged incidents occurred.

## **B. Gradual Deterioration**

Mr. Verga’s application as originally drafted was based on a claim that his physical condition resulted from “cumulative/repetitive trauma from work... as custodian.” As previously noted, for an application based on a theory of gradual deterioration, an applicant may prove causation (and thus show that his injury is compensable under G.L. c. 32, § 7) if he can demonstrate that his condition resulted from an “identifiable condition” at work that is “not common and necessary to all or a great many occupations.” *Blanchette, supra* at 485. To prevail under this theory of recovery, an applicant must show that his injuries were not the result of “ordinary wear and tear but rather resulted from specific factors or conditions unique to his employment” as a custodian. *Sibley v. Contributory Retirement Appeal Board*, 24-P-741, Memorandum and Order Pursuant to Rule 23.0, slip op. at 7 (May 5, 2025). The key factors that

distinguish a compensable “identifiable condition” from conditions that are “common to many occupations” (which are not compensable under G.L. c. 32, § 7) are the “frequency and intensity of activity compared to other occupations.” *Adams v. Contributory Retirement Appeal Board*, 414 Mass. 360, 365 (1993) (internal citations omitted.)

Here, Mr. Verga relies on a claim that his work as a custodian was strenuous; but heavy labor, standing alone, is a hazard that is common to many occupations and is therefore not compensable under G.L. c. 32, § 7. *Sibley*, slip op. at 8 (laborer whose job required him to engage in frequent heavy lifting and shoveling had not shown that he sustained a compensable injury.) The fact that job duties are physically demanding does not by itself “transform the general duty of lifting heavy objects into an identifiable condition.” *Id.* Mr. Verga’s duties are comparable to many other employees whose jobs require them to perform manual labor. *Kelsey v. Weymouth Retirement Board*, No. CR-06-66, at \*7 (DALA Sept. 29, 2006) (school custodian’s duties, “while physical in nature, are not distinguishable from a wide variety of similar occupations all of which are physically demanding. The Petitioner has not demonstrated anything particular or distinguishable...to differentiate his occupation from a great many other occupations where employees have to perform cleaning chores...”), *aff’d*, No. CR-06-66 (CRAB Apr. 2, 2007). Mr. Verga has not shown that his work as a custodian at the GPS exposed him to a condition “not common and necessary to all or a great many occupations” and, therefore, he is not entitled to accidental disability benefits based on a theory of gradual deterioration.

For all of the foregoing reasons, the decision of the Respondent Gloucester Retirement Board is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

*Melinda E. Troy*

---

Melinda E. Troy  
Administrative Magistrate

Dated: June 6, 2025

**Exhibit List**

1. Member's Application for Disability Retirement and related injury reports, received at the GRB May 17, 2017.
2. Physician's Statement from Shawn Pawson, M.D. dated July 21, 2017 and related documents, including two City of Gloucester job descriptions for a Junior Custodian and medical records for the Petitioner from Cape Ann Medical Center.
3. Employer's Statement received June 2, 2017 including a job description for a Junior Custodian and a Form 101 dated April 1, 2014, medical records from Neighborhood Health Plan dated May 16, 2016, and medical records from Stephen Saris, M.D. dated April 1, 2016.
4. Medical records for the Petitioner from Douglas Peterson, D.O. dated April 3, 2015.
5. Transcript of GRB Executive Session September 6, 2017.
6. Regional Medical Panel Certificates and Reports.
7. Letter from the Public Employees' Retirement Administration Commission to the GRB dated May 21, 2021, remanding the Petitioner's application to the GRB.
8. Notice of Retirement Board Action dated July 1, 2021.
9. Letter from counsel to the Petitioner to DALA dated March 7, 2022.

10. Medical records from Frank Graf, M.D., dated September 30, 2014.
11. Medical records from David C. Morley, M.D., dated March 23, 2017.
12. Medical records from Stefan Kim, M.D., received May 18, 2017.
13. Medical records from Michael Medlock, M.D., received May 23, 2017.
14. Medical records from William Paley, M.D., received May 30, 2017.
15. Medical records from Douglas Peterson, M.D.
16. Order of Payment under G.L. c. 152, § 35.
17. Petitioner's letter of appeal dated July 9, 2021.
18. Weather reports for March 5, 2014.
19. Document entitled "Southern New England Snow Totals December 17, 2013."