

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Thomas Walsh,**  
Petitioner,

No. CR-19-517

Dated: January 12, 2024

v.

**Malden Retirement Board,**  
Respondent.

**Appearance for Petitioner:**  
Christopher G. Fallon, Esq.

**Appearance for Respondent:**  
Christopher J. Collins, Esq.

**Administrative Magistrate:**  
Yakov Malkiel

**SUMMARY OF DECISION**

As of the date of his retirement for superannuation, the petitioner remained capable of performing the “essential duties” of his job as a deputy fire chief. He therefore is not entitled to retire for accidental disability.

**DECISION**

Petitioner Thomas Walsh appeals from a decision of the Malden Retirement Board denying his application to retire for accidental disability. An evidentiary hearing took place on January 10, 2024. Mr. Walsh was the only witness. I admitted into evidence exhibits marked 1-21 and stipulations marked 1-8.

**Findings of Fact**

For reasons discussed *infra*, the following facts are drawn from the evidence offered by Mr. Walsh, believed and unrebutted.

1. Mr. Walsh began working for the Malden Fire Department in 1979. The job duties of rank-and-file firefighters involve taxing physical demands. Such firefighters must be

able to carry heavy gear, lay water hoses, and throw ladders. (Stipulation 1; Exhibit 15; testimony.)

2. During 1993, while performing his job duties, Mr. Walsh suffered an unusually severe fracture of his right knee. He underwent surgery and extensive rehab. He remained out of work for approximately one year. (Stipulations 2, 3; Exhibits 1-6; testimony.)

3. Upon his return to work, Mr. Walsh was promoted to the rank of deputy chief. In Malden's fire department, the role of the deputy chief focuses on tactics and strategy. At the scene of an incident, the deputy chief is responsible for overseeing and directing the unit's lower-ranking firefighters. It is therefore imperative for the deputy chief to remain at some remove from the physical firefighting efforts. Any formal documents that list such physical efforts among the deputy chief's duties do not reflect reality. (Stipulation 3; Exhibits 14-16; testimony.)

4. As of mid-2014, Mr. Walsh's knee was not pain-free. But he did not feel that his medical condition limited his ability to discharge his duties as a deputy chief. His colleagues also never expressed reservations about his fitness. In June 2014, Mr. Walsh retired for superannuation. (Stipulation 5; testimony.)

5. Until mid-2017, Mr. Walsh was in the habit of running three miles a day and lifting weights five times a week. Around that time, he began to suffer from pain in his arm and back, which his doctors attributed to rheumatoid arthritis. Mr. Walsh then transitioned to a regimen of lower-impact exercise. (Exhibits 9, 10; testimony.)

6. The pain and instability in Mr. Walsh's knee worsened over time. By mid-2019, his knee felt to him "like an eggshell." In July of that year, Mr. Walsh consulted with Dr. Toru Endo, who wrote: "The patient [is] now experiencing constant discomfort at rest and with activity. He reports instability also." (Exhibit 11; testimony.)

7. Two month later, in September 2019, Mr. Walsh applied to retire for accidental disability. In his application, he attributed his knee pain to the 1993 injury. He wrote: “As of the date of this application, I . . . cannot sit in a car for any extended period of time . . . .” In an accompanying form, the Malden fire chief wrote that Mr. Walsh last worked in 2014, and “at that time was able to perform all physical demands and tasks.” (Exhibits 13, 14.)

8. In October 2019, the board denied Mr. Walsh’s application without convening a medical panel. He timely appealed. (Stipulations 7, 8; Exhibits 17, 18.)

9. In July 2020, Mr. Walsh obtained a letter about his medical condition from Dr. Louis Bley. Dr. Bley opined that Mr. Walsh’s 1993 injury caused him “severe post-traumatic [osteoarthritis] . . . eventually disabling him from work.” Dr. Bley’s summary of Mr. Walsh’s records indicates that Mr. Walsh displayed “excellent function” in May 2013 and, after that visit, did not obtain notable treatment until mid-2017. (Exhibit 12.)

### **Analysis**

An application for accidental disability retirement may be denied without referral to a medical panel if the applicant does not make out a prima facie case. 840 C.M.R. § 10.09(2); *Duquet v. Malden Ret. Bd.*, No. CR-18-297, at \*8 (DALA Aug. 28, 2020). A prima facie case consists of “sufficient evidence that, if unrebutted and believed, would allow a fact finder to conclude that [the member] satisfies the threshold requirements to qualify for accidental disability retirement.” *Sibley v. Franklin Reg’l Ret. Bd.*, No. CR-15-54, at \*5-6 (CRAB May 26, 2023). *See Hollup v. Worcester Ret. Bd.*, 103 Mass. App. Ct. 157, 164 n.5 (2023).

To be entitled to accidental disability retirement, an applicant must be permanently incapacitated as a result of a workplace injury or hazard. G.L. c. 32, § 7(1). The pertinent medical problem is required to have “matured,” i.e., to have become disabling, while the

applicant was still a “member in service.” *Hollup*, 103 Mass. App. Ct. at 164-65. *See Vest v. Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 191, 193 (1996).

An incapacity means an inability to perform “the essential duties of [the member’s] job.” G.L. c. 32, § 7(1). A member’s “essential duties” are those “which must *necessarily* be performed by an employee to accomplish the *principal object(s)* of the job or position.” 840 C.M.R. § 10.21 (emphasis added). The analysis of whether particular duties are “essential” draws in part on formal employment documents. *Id.* But it also depends on factors rooted in real-life practice, such as “[w]hether the employer requires all employees in a particular position . . . to perform [the] duty,” “[t]he amount of time that employees spend performing the function,” and “[t]he actual experience of those persons who . . . have held the position.” *Id.* In an instructive case, a police chief who delegated work to other officers, seeking “to keep his own duties light,” continued to perform “the duties necessary to accomplish the principal objects of his position.” *Holland v. Malden Ret. Bd.*, No. CR-13-538, at \*2-3 (CRAB July 23, 2018).

At the time of Mr. Walsh’s retirement, his essential duties were the supervisory, tactical, strategic, less-physical responsibilities of a deputy chief. Those duties were the only ones that Mr. Walsh “necessarily” needed to perform in order to discharge his position’s “principal objects.” 840 C.M.R. § 10.21. They were all that the fire department asked of him. Mr. Walsh agrees that he was able to perform that set of duties through the date of his retirement for superannuation.<sup>1</sup> It follows that he was not incapacitated while still a member in service.<sup>2</sup>

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<sup>1</sup> This case thus does not present the problem of whether a member may make out a prima facie case by averring, without other evidence, that his or her current incapacity predated his or her departure from service. *Cf. Duquet, supra*, at \*10.

<sup>2</sup> In light of the foregoing analysis, it is not necessary to determine whether Dr. Endo’s letter accompanied Mr. Walsh’s application and, if so, whether that letter adequately stood in for

**Conclusion and Order**

The board's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

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the preprinted form that PERAC directs applicants to procure from their physicians. *Cf. Cummings v. Gloucester Ret. Bd.*, No. CR-20-322 (DALA June 16, 2023).