COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Scott Wentworth,
Petitioner,

v.

Taunton Retirement Board,
Respondent.

Docket No.: CR-24-0672

Appearances:
For Petitioner: Leah Marie Barrault, Esq.
For Respondent: Christopher Collins, Esq.

Administrative Magistrate:
Yakov Malkiel

SUMMARY OF DECISION

The petitioner experienced shortness of breath and tightness in his chest while working as a firefighter. A cardiologist diagnosed him with several heart conditions; but a regional medical panel, applying no erroneous standards, declined to certify that the petitioner is medically incapable of performing the essential duties of his job. The petitioner is not entitled to retire for accidental disability.

DECISION

Petitioner Scott Wentworth appeals from a decision of the Taunton Retirement Board (board) denying his application to retire for accidental disability. The appeal was submitted on the papers without objection. The parties filed briefs in February, April, August, and October 2025. I admit into evidence the petitioner's exhibits 1-11 and the board's exhibits 1-9.

Findings of Fact

I find the following facts.

1. Mr. Wentworth applied for a position with the Taunton fire department in 1996. As part of the application process, Mr. Wentworth underwent a pre-employment physical

examination. The examiners detected no significant issues and found Mr. Wentworth medically fit for a firefighter job with no restrictions. (Board exhibit 4.)

2. Mr. Wentworth began working as a firefighter in 1997. He was thirty-three years old. During the ensuing decades, he was diagnosed with sleep apnea, hyperlipidemia, obesity, and diabetes. (Petitioner exhibit 2; board exhibit 8.)

3. While at work on June 6, 2023, Mr. Wentworth experienced shortness of breath and tightness in his chest. He felt ill during the following week. On June 12, 2023, he called out sick. He has not returned to work since then. (Petitioner exhibit 1; board exhibit 2.)

4. Also in June 2023, Mr. Wentworth saw his primary care doctor, who referred him to a cardiologist. The cardiologist diagnosed a "minimally enlarged aortic root," "occasional" premature ventricular contractions (PVCs), "hypertension," "atrial tachycardia," and shortness of breath upon exertion. (Petitioner exhibits 1, 3.)

5. Mr. Wentworth again experienced tightness in his chest and shortness of breath on one occasion during August 2023. (Petitioner exhibit 1.)

6. In February 2024, Mr. Wentworth submitted an application for accidental disability retirement, citing the same diagnoses made by his cardiologist. The application was supported by a treating physician's statement from Mr. Wentworth's primary care doctor, who described Mr. Wentworth as medically incapable of "lifts, bending, and strenuous actions," categorized the condition as likely permanent, and viewed the condition as potentially work-related under the heart law, G.L. c. 32, § 94. (Petitioner exhibit 3; board exhibit 1.)

7. A regional medical panel consisting of Dr. Eric Ewald (cardiology), Dr. Richard Ashburn (internal medicine), and Dr. Michael Johnstone (cardiology) convened to evaluate Mr.

Wentworth's application. Each panelist examined Mr. Wentworth separately during April-May 2024. (Petitioner exhibits 4, 6, 8.)

8. Dr. Ewald declined to certify that Mr. Wentworth is incapacitated, opining that he is "still capable of continuing to work in his prior capacity without restriction." In a subsequent letter, Dr. Ewald listed the bases for his opinion as Mr. Wentworth's "normal [left ventricular] and valvular function," his "unremarkable echocardiogram," and his unworrying stress test. Dr. Ewald attributed Mr. Wentworth's symptoms not to a "true cardiac abnormality" but to "age, obesity and/or deconditioning." Dr. Ewald did not believe that a return to work would expose Mr. Wentworth to the risk of re-injury, explaining that he "d[id] not appreciate any significant baseline cardiac injury/abnormality." (Petitioner exhibits 4, 5.)

9. Dr. Johnstone also declined to certify incapacity, stating that Mr. Wentworth is "physically capable of performing the essential duties of a firefighter," and explaining that Mr. Wentworth "showed only mild concentric left ventricular hypertrophy." Dr. Johnstone stood by these opinions in response to a request for clarification. He added that, if Mr. Wentworth were to return to work, he would not face a "significant risk for re-injury," because "his cardiac risk is at 1% per year"; Dr. Johnstone emphasized that he "would not put this particular firefighter in danger if [he] felt the risk of a cardiac event was high." (Petitioner exhibits 8, 9.)

10. Dr. Ashburn, in his original certificate, answered "yes" to the statutory questions of incapacity, permanence, and causation. But on causation, Dr. Ashburn changed his mind in a clarification letter, stating that Mr. Wentworth's disability "is *not* . . . the natural and proximate result of any [work-related] personal injury sustained or hazard undergone." In support of his revised opinion, Dr. Ashburn explained that Mr. Wentworth's symptoms are more weight-

related than a "consequence of his occupation, per se." Dr. Ashburn added that the heart law's presumption of causation "would be appropriate" if, hypothetically, Mr. Wentworth's weight were normal. (Petitioner exhibits 6, 7.)[1]

11. In October 2024, the board denied Mr. Wentworth's application. He timely appealed. (Petitioner exhibits 10, 11.)

Analysis

A Massachusetts public employee is entitled to retire for accidental disability upon establishing that he or she "is unable to perform the essential duties of the member's job," that the incapacity "is likely to be permanent," and that it arose "by reason of a [work-related] personal injury . . . sustained or a hazard undergone." G.L. c. 32, § 7(1). Firefighters who suffer from heart conditions and satisfy certain other prerequisites enjoy a statutory shortcut: the heart law, G.L. c. 32, § 94, presumes the necessary causal connection in their cases "unless the contrary be shown by competent evidence." *Id. See generally Shailor v. Bristol Cty. Ret. Bd.*, No. CR-21-343, 2024 WL 4491674, at *2-3 (Div. Admin. Law App. Aug. 16, 2024).

An employee cannot be retired for accidental disability unless a regional medical panel has certified that the elements of disability, permanence, and causation are satisfied. *Blanchette v. Contributory Ret. Appeal Bd.*, 20 Mass. App. Ct. 479, 483 (1985). If a panel declines to so certify, the application must be denied, with exceptions where the panel

[1] Mr. Wentworth maintains that the board's requests for clarification encouraged the panelists to doubt the merits of the application. But by the time the board made its requests, Dr. Ewald and Dr. Johnstone had already returned negative certificates. This is therefore not a case in which a board's premature skepticism may have unfairly prejudiced the member. *See* 840 C.M.R. § 10.02; *Pease v. Worcester Reg'l Ret. Bd.*, No. CR-21-82, 2022 WL 19762164, at *6 (Div. Admin. Law App. Dec. 23, 2022).

employed an "erroneous standard" or failed to "review . . . all the pertinent facts." *See Foresta v. Contributory Ret. Appeal Bd.*, 453 Mass. 669, 684 (2009); *Kelly v. Contributory Ret. Appeal Bd.*, 341 Mass. 611, 617 (1961).

Mr. Wentworth claims that his panel employed an "erroneous standard" in two ways. He focuses first on the refusal by Dr. Johnston and Dr. Ewald to certify incapacity. Mr. Wentworth maintains that they failed to consider the risk that a return to work would result in him becoming unwell again. He is correct that even an asymptomatic member must be viewed as incapacitated if he or she cannot "perform the essential duties of [the] . . . position without a reasonable probability of substantial harm to [himself or herself]." *Filipek v. Bristol Cty. Ret. Bd.,* No. CR-03-672 (Contributory Ret. App. Bd. Dec. 23, 2004). But Dr. Ewald and Dr. Johnstone appreciated this point. Dr. Ewald saw no risk of "reinjury" because, in essence, he did not consider Mr. Wentworth to have been "injured" in the first place; there was no "significant baseline cardiac injury/abnormality." Dr. Johnstone offered a related explanation, namely that Mr. Wentworth faced no elevated "risk of a cardiac event." Fairly read, both panelists' opinions squared with the governing standard: they saw Mr. Wentworth's health as involving no unreasonable or disabling risks.[2]

The valid negative certificates of Dr. Ewald and Dr. Johnstone are fatal to Mr. Wentworth's application. His complaint about Dr. Ashburn's opinion therefore could not affect the result. Nevertheless, that complaint also does not entitle Mr. Wentworth to relief. He argues primarily that when Dr. Ashburn withdrew his "yes" answer on causation, he failed to

[2] Given Dr. Ewald's non-erroneous refusal to certify incapacity, there is no need to analyze his discussion of causation (which Mr. Wentworth also criticizes).

consider the implications of the heart law. But Dr. Ashburn's analysis does not disclose such an error. The heart law's presumption is rebuttable by "competent evidence." G.L. c. 32, § 94. Otherwise put, in cases that trigger the presumption, causation is viewed as satisfied unless it is *disproved* by a preponderance of the evidence. *Williams v. Norfolk Cty. Ret. Bd.*, No. CR-03-556, at *3 (Contributory Ret. App. Bd. Dec. 23, 2004). On a fair reading of Dr. Ashburn's clarification letter, he was persuaded that Mr. Wentworth's symptoms more-likely-than-not resulted from a non-workplace-related cause, namely Mr. Wentworth's weight. *Compare Minors v. State Bd. of Ret.*, No. CR-05-702 (Div. Admin. Law App. Nov. 2, 2006), *with Magliocca v. State Bd. of Ret.*, No. CR-99-375 (Div. Admin. Law App. Apr. 28, 2000). That opinion was not contrary to the heart law's commands or unsupported by Mr. Wentworth's medical history.[3]

Conclusion and Order

The Board's decision is AFFIRMED.

Dated: December 5, 2025

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
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[3] Dr. Ashburn probably also should have said whether it is "possible" that Mr. Wentworth's service caused his disability; but an effort to correct this misstep would have no practical consequences. *See Jameson v. Lawrence Ret. Bd.*, No. CR-21-109, 2023 WL 6900309, at *5 (Div. Admin. Law App. Oct. 13, 2023); *Rogers v. Worcester Ret. Bd.*, No. CR-22-164, 2024 WL 413690, at *5 n.7 (Div. Admin. Law App. Jan. 26, 2024).