

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

**Division of Administrative Law Appeals**

**David Whooley,**  
Petitioner

v.

Docket No. CR-22-0207  
Date: December 8, 2023

**Middlesex County Retirement System,**  
Respondent

**Appearance for Petitioner:**

Stephen J. Allard, Esq.  
Keches Law Group, P.C.  
2 Lakeshore Center  
Third Floor  
Bridgewater, MA 02324

**Appearance for Respondent:**

Thomas F. Gibson, Esq., Chairman  
Middlesex County Retirement System  
25 Linell Circle  
P.O. Box 160  
Billerica, MA 01865

**Administrative Magistrate:**

James P. Rooney

**Summary of Decision**

Member's second application for accidental disability retirement was denied without having the member examined by a medical panel. Parties agree to remand to the retirement system to have the member examined by a medical panel once the member amends his application and has his doctor amend his physician's statement to clarify the nature of the injury.

**DECISION**

David Whooley, a former dispatcher with the Sudbury Police Department, appeals the May 5, 2022 decision of the Middlesex County Retirement Board denying his application for

accidental disability retirement without convening a medical panel. He filed a timely appeal.

Mr. Whooley has been to the Division of Administrative Law Appeals before. In April 2021, I affirmed Middlesex's denial of his first attempt to seek accidental disability retirement because the application was not supported by a physician's statement that addressed the injury on which the application was based. The applicant claimed he was disabled by an injury that occurred on a specific day, while the physician maintained that he was disabled by a job hazard associated with the long-term repetitive movements he had to make on the job. *Whooley v. Middlesex County Ret. System*, CR-19-0530 (April 2, 2023). I also noted that the "denial of Mr. Whooley's application in this decision does not preclude him from refile, but his application ground must this time be supported by his physician's statement. *Id.*, Decision at 11.

On March 28, 2022, Mr. Whooley filed a second application for accidental disability retirement based on an injury. He described the medical basis of his injury as "employee injured his right shoulder at work." He listed the day this occurred as January 30, 2016, which, as he testified in the first hearing, was a day he moved around heavy furniture in order to ready the new police station where he worked for an open house. His application was supported by a physician's statement of Dr. Barry Saperia. He diagnosed Mr. Whooley with "S/P C4-5 and C5-6 anterior cervical discectomy and fusion, [i]mpingement syndrome [right] shoulder; and AC joint arthritis [right] shoulder." As for the cause of Mr. Whooley's disability, the doctor stated that "[o]n 1/30/16, patient had a work-related injury and as a result was given a diagnosis of C4-5 and C5-6 right sided disc herniation."

On May 5, 2022, the Retirement System denied Mr. Whooley's second application. It stated:

Although the DALA Magistrate suggested that the member was not precluded from filing a subsequent application for accidental disability retirement, the Board does not agree, and further finds there are no material differences between the member's first application and the second application, nor between the physician's statements accompanying both.

I scheduled a hearing on December 5, 2023 to occur over Webex. The representatives of both parties appeared. After some discussion of each party's position, they agreed that this matter should be remanded to the Middlesex County Retirement System to have Mr. Whooley examined by a medical panel. Two conditions are to apply. First, Mr. Whooley is to amend his application to describe how he was injured. Dr. Saperia is also to amend his statement to describe the injury that he asserts caused the disability claimed by Mr. Whooley. Second, the medical panel is to be given relevant documents that were proposed in connection with Mr. Whooley's two appeals. I have examined the exhibits submitted in each appeal. Of the sixteen exhibits submitted in the first appeal, the medical panel should be given Exhibits 3-16. In the second appeal, the parties submitted three uncontested exhibits. The panel should be given only the third exhibit, which is the 2002 application for accidental disability retirement. The parties also submitted nine other, apparently contested, exhibits. All of these should go to the panel.

### **Conclusion**

This matter is remanded to the Middlesex County Retirement System to have Mr. Whooley examined by a medical panel in accordance with the terms spelled out in this decision.

DIVISION OF ADMINISTRATIVE LAW APPEALS



James P. Rooney  
Acting Chief Administrative Magistrate

Dated: December 8, 2023