COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

PAMELA WILLIAMS,

Petitioner-Appellee

v.

PITTSFIELD RETIREMENT BOARD,

Respondent-Appellant.

CR-15-461

DECISION

Respondent Pittsfield Retirement Board (PRB) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), allowing petitioner Pamela Williams' application for accidental disability retirement benefits. A Joint Motion to Conduct a Deposition due to the physical limitations of Ms. Williams was filed by the parties and allowed by the magistrate. Ms. Williams was deposed on February 16, 2017. The DALA magistrate admitted Respondent Exhibits R1 – R25 and Petitioner Exhibits P1 – P35. The magistrate's decision is dated November 24, 2017. PRB filed a timely appeal to us.

After considering all the arguments presented by the parties and after a review of the record, we adopt the DALA magistrate's Findings of Fact 1- 88 as our own and incorporate by reference the DALA decision. We affirm the DALA decision for the reasons explained in the Conclusion, adding the following comments.

Under G.L. c. 32, § 7, a public employee is eligible for accidental disability retirement benefits if the employee demonstrates that she is "unable to perform the essential duties of [her] job and that such inability is likely to be permanent ... by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, [her] duties at some definite place and at some definite time." In so doing, she must prove one of two hypotheses: that her disability was caused by a single or a series of work-related events or that her employment

exposed her to an "identifiable condition not common or necessary to all or a great many occupations" resulting in a disability through gradual deterioration. *Blanchette v. CRAB*, 20 Mass. App. Ct 479, 485 (*quoting Zerofski's Case*, 385 Mass. 590, 595 (1982)). Ms. Williams has the burden of proving each element of her claim by a preponderance of the evidence. *Bagley v. Contributory Retirement Appeal Bd*., 397 Mass. 255, 258 (1986)(petitioner has burden of proving his case by the preponderance of evidence); *Lisbon v. Contributory Retirement Appeal Board*, 670 N.E. 2d 392, 41 Mass. App. Ct. 246 (1996); *Daley v. Contributory Retirement Appeal Bd.*, 60 Mass. App. Ct. 1110, 801 N.E. 2d 324 (2004); *Hough v. Contributory Retirement Appeal Bd.*, 309 Mass. 534, 36 N.E. 2d 415 (1941); *Wakefield Contributory Retirement Bd. v. Contributory Retirement Appeal Bd.*, 352 Mass. 499, 226 N.E.2d 245 (1967).

An applicant seeking accidental disability retirement benefits must be examined by an independent medical panel. G.L. c. 32, § 6(3)(a); *Kelley v. Contributory Ret. App. Bd.*, 341 Mass. 611, 613 (1961). *See also Malden Ret. Bd v. Contributory Ret. App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973) (panel opines on medical questions "beyond the common knowledge and experience of [a] local retirement board"). A condition precedent to granting accidental disability benefits is the panel's issuance of an affirmative certification on questions of incapacity, permanence, and causation.[1] *Kelley*, 341 Mass. at 613. A medical panel's certification is given deference unless it is based on an erroneous standard, fails to follow proper procedures, is improperly compromised, or unless the certificate is "plainly wrong." *Malden v. Contributory Ret. Appeal Bd*., 1 Mass. App. Ct. 420, 423 (1973); *Kelley*, 341 Mass. 611 (1961).

Under G.L. c. 32, § 7(1), an applicant must prove that the work-related injury was the "natural and proximate cause" of the disability. *Campbell v. Contributory Ret. App. Bd.*, 17 Mass. App. Ct. 1018, 1018-19 (1984). Aggravation of a pre-existing condition to the point of disability satisfies the natural and proximate requirement. *Baruffaldi v. Contributory Retirement Appeal Bd.*, 337 Mass. 495, 150 N.E.2d 269, 271 (1958). In this instance, for an injury to be the "natural and proximate" cause of Ms. Williams' disability, her injury must be more than a

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[1] The panel addresses three questions: (1) whether the applicant is mentally or physically incapacitated for further employment duties; (2) whether such incapacity is likely to be permanent; and (3) "whether or not the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which [an accidental disability] retirement is claimed." G.L. c. 32, § 6(3).

"contributing" or "aggravating" factor to her pre-existing conditions. *Blanchette*, 20 Mass. App. Ct. at 485; *Campbell*, 17 Mass. App. Ct. at 1019. *See also Burke v. Contributory Retirement Appeal Bd*., 34 Mass. App. Ct. 212, 213 (1993). The Supreme Judicial Court has determined that for an event of employment to be more than a "contributing cause," it must be "a significant contributing cause to [the] employee's disability." *Ann Marie Robinson's Case*, 416 Mass. 454, 460, 623 N.E.2d 478 (1993).

Relying on the opinion and medical records from Drs. Van Uitert and Lehmann, as well as the unanimous certification of the regional medical panel and Ms. Williams' testimony during an audio visual deposition, the magistrate determined that Ms. Williams met her burden of proof for entitlement to accidental disability retirement benefits. However, PRB contends that the magistrate's decision is not supported by the substantial evidence in the record and asserts that the opinions of Dr. Van Uitert and the medical panel do not satisfy the natural and proximate cause requirement for entitlement to accidental disability retirement benefits. Instead, PRB argues that Ms. Williams's disability was based on the natural progression of her MS and was not sustained during the performance of her duties. We do not agree.

The magistrate concluded that Ms. Williams became disabled as of her last day of work due to the foot injury of October 2005, which aggravated her pre-existing MS, degenerative disc disease, degenerative joint disease, and knee injury to the point of disability.[2] We agree that this conclusion is supported by the opinions and medical records of Drs. Van Uitert, Lehmann and the unanimous medical panel. We incorporate by reference the magistrate's decision at pages 24-28. The magistrate noted in her decision that the substantial evidence in the record demonstrates Ms. Williams' pre-existing degenerative joint disease, degenerative disc disease and pathology in her knee became symptomatic or more symptomatic due to the repeated ambulation with an awkward gait from and after the left foot fracture, which caused her to cease working on June 19, 2013. But for the foot injury of October 2005, Ms. Williams' pre-existing conditions would not have been aggravated to the point of disability, thereby satisfying the natural and proximate cause requirement.[3] *Baruffaldi v. Contributory Retirement Appeal Bd.*,

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[2] In FN 4, the magistrate correctly noted that Ms. Williams' claim for accidental disability retirement cannot be based on the knee injury of April 2005 because the injury occurred after she had completed her workday and was leaving the school. Accordingly, Ms. Williams' claim is based only on the injury of October 4, 2005.

[3] DALA decision * 24-25.

337 Mass. 495, 150 N.E.2d 269, 271 (1958). In so deciding, deference is given to the subsidiary findings made by the magistrate. *Vinal v. Contributory Retirement Appeal Bd*., 13 Mass. App. Ct., 85, 99-100 (1982).

In our affirmance, we find that the connection between Ms. Williams' foot injury of October 2005 and resulting disability were not broken, as "the whole affair had its origin in the nature and conditions of the employment, so that the employment bore to it the relation of cause to effect." *Jones v. Weymouth Retirement Bd.*, CR-04-181 (CRAB Sept. 30, 2005). That is, Ms. Williams' personal injury occurred "in the line of consequences resulting from the circumstances and conditions of her employment." *Id.* The magistrate noted in her decision that Ms. Williams had a series of injuries beginning in 2003 and a history of MS and orthopedic issues.[4] Prior to the foot injury of October 2005, the record does not reflect Ms. Williams had significant difficulty ambulating or complaints of pain or significant limitations impacting her ability to perform her work duties. The magistrate explained that after the foot injury of October 2005, Ms. Williams had to wear a walking boot and used a cane, which caused her to have an awkward gait, thereby aggravating her pre-existing musculoskeletal issues, MS and prior knee injury. The walking boot and cane also caused Ms. Williams to ambulate awkwardly around narrow spaces and maneuver around equipment within the classrooms. The constant use of stairs and prolonged walking with the walking boot and cane throughout the workday while carrying supplies resulted in complaints of pain affecting her back, legs, hips and knee. Ms. Williams also experienced arm and neck pain due to the use of a cane. She reported compensating on her right side as a result of the injury to her left side. The magistrate correctly determined that the basis of Ms. Williams' injury is attributed to "the nature, conditions, obligations or incidents of [her] employment." *Zerofski's Case*, 385 Mass at 592, *quoting Caswell's Case*, 305 Mass. 500, 502 (1940). The record supports the determination that Ms. Williams' pre-existing conditions would not have been aggravated but for the foot injury of October 2005.

The magistrate's decision is further supported by the proposition discussed in *Blair v. Board of Selectmen of Brookline*, 24 Mass. App. Ct. 261, 263-64, 508 N.E.2d 628, 630 (1987). In *Blair*, a police officer, who was suffering from hypertension, was determined to have suffered an injury during the performance of his duties. In its decision, the Appeals Court indicated that

[4] Exhibits P-9, P-14, P-25, P-33, R-4, R-10-12, R-15, R-17-R-18.

the disabling condition "must be, or be traceable directly to, a personal injury peculiar to the employment," *citing Maggelet's Case*, 228 Mass. 57, 61, 116 N.E. 972 (1917). "'The injury need not be unique to the trade, and need not, of course, result from the fault of the employer. But it must, in the sense we have described it, be identified with the employment.'" *Blair*, 24 Mass. App. Ct. at 264, *citing Zerofski's Case*, 385 Mass. 590, 594-595, 433 N.E. 2d 869 (1982). Here, Dr. Van Uitert opined that Ms. Williams' disability can be traced back to the original injury to her left ankle after stepping on a ball attached to a chair and the sequalae of climbing and descending stairs, pivoting, twisting, walking sideways and navigating through narrow aisles between desks, as well as walking over obstacles and lumpy carpets in congested classrooms while using crutches, wearing a walking boot and using a cane. He concluded that her incapacity was the natural and proximate result of her claimed personal injury, describing it as physical activities at her job and prolonged periods of standing and walking aggravated her medical conditions and that she ceased working on June 19, 2013 as a result of this injury. [5] Dr. Van Uitert's opinion supports the determination that Ms. Williams' disability can be traced back to an injury peculiar to her employment.

Dr. Lehmann's treatment notes also demonstrate that Ms. Williams injury can be traced back to the foot injury of October 2005. His treatment notes indicate that Ms. Williams ambulated with an awkward gait through narrow spaces, while climbing and descending stairs, and while navigating around obstacles around the classroom and the school building carrying supplies while wearing the walking boot and using a cane. Dr. Lehmann also noted in his records that after the October 2005 injur,y Ms. Williams complained of persistent and increasing pain affecting her neck, upper and lower extremities, back, and hip stemming from the awkward gate ambulating with the walking boot and cane throughout the school building while carrying supplies, from the persistent use of stairs, and from maneuvering around tight spaces and obstacles. Ms. Williams reported to Dr. Lehmann in August 2013 that she had difficulty performing her duties as a result of her symptoms and limitations.[6] Ms. Williams ceased working on June 19, 2013 due to these difficulties.

In her decision, the magistrate also relied upon the unanimous certification by the medical panel. The report reflects a series of injuries beginning in 2003 with back trauma, back

[5] Finding of Fact 46; Ex. P-14 (p. 120).
[6] FF 36-37, 44, 78-79; Ex. P-25, P-33.

pain, metatarsal fracture and knee injury leading to patellar surgery. The medical panel also noted fracture of her left foot after slipping on a ball attached to a chair leg with increasing back pain and another injury after tripping on carpet, landing on her knees. While she continued to work after these events, the medical panel noted Ms. Williams had trouble walking and was eventually given a sit-down job. After having had the opportunity to review the pertinent medical records and conducting an examination of Ms. Williams, the medical panel issued an affirmative certification to the three statutory questions of incapacity, permanence and causation. The medical panel was implicit in its conclusion, stating "By application of the Aggravation of a Pre-Existing Condition Standard, causation is established."[7] Its statement was not unambiguous and clearly expressed its opinion regarding the question of causation. Unless there is evidence that the medical panel applied an erroneous standard, failed to follow proper procedures, was improperly compromised, or the certificate is "plainly wrong," we must defer to its certification. *Malden v. Contributory Ret. Appeal Bd*., 1 Mass. App. Ct. 420, 423 (1973); *Kelley*, 341 Mass. 611 (1961).

Nevertheless, PRB emphasized that the medical panel diagnosed Ms. Williams with MS, rather than degenerative disc disease, degenerative joint disease, or knee impairment. It contends the medical panel's report is inconsistent with Ms. Williams' claim that she became disabled by virtue of her orthopedic conditions and her work injury of October 2005. [8] Thus, PRB argues that Ms. Williams should not be entitled to accidental disability retirement. Nevertheless, as explained above, there is a causal connection between the October 2005 foot injury and her disabling conditions to warrant the granting of accidental disability retirement benefits. The medical evidence in the record and the medical opinion of Dr. Van Uitert showed that the October 2005 foot injury required Ms. Williams to wear a walking boot and use a cane, resulting in her ambulating in an awkward manner while constantly managing the stairs, pivoting, twisting, walking sideways and navigating through narrow aisles between desks, as well as walking over obstacles and lumpy carpets in congested classrooms. Dr. Van Uitert's opinion and his treatment notes,[9] the medical records,[10] and Ms. Williams' testimony support the

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[7] Ex. R-14.
[8] Appellant Memo at 7, 10-13.
[9] Ex. R-5, R-17.
[10] Ex. 14, 18 (p. 7), 21 (pp 46, 48, 50, 52, 54, 57, 60, 65-70), 24 (pp 72, 76), 25; FF 2-10, 12, 15-16, 18, 20, 22-26, 30, 32, 34-37, 40, 42-45, 49-54., 56-57, 59-60, 62, 70, 72-79.

determination that these actions, particular to her employment, aggravated her pre-existing MS, degenerative disc disease, degenerative joint disease, and knee injury to the point of disability. The medical panel's diagnosis bears restating: "Multiple sclerosis, *symptoms of which are exacerbated by the injury she suffered to her knees*." Because those actions or movements with the awkward gait also aggravated her knee injury, it follows then that Ms. Williams' MS symptoms were aggravated by the knee injury. Ms. Williams' MS is "traceable directly to a personal injury peculiar to the employment." The resulting aggravation of her MS would not have occurred but for the foot injury of October 2005, which caused her to ambulate with an awkward stance which further aggravated her knee injury. The medical panel's certification report is not inconsistent with the magistrate's decision.

Lastly, in our affirmance of the DALA decision, we give "substantial deference" to the magistrate's credibility determination of Ms. Williams' testimony during an audio visual deposition. PRB's argument that the magistrate was unable to assess the credibility of Ms. Williams' testimony because there was no "live" testimony is unavailing. The parties agreed to accommodate Ms. Williams' physical limitations by holding an audio visual deposition in lieu of live testimony. Ms. Williams was subjected to direct and cross examinations. The magistrate was able to view the deposition, as well as the written transcript of the deposition, to fully assess the credibility of Ms. Williams' testimony.[11] In this case, while there was no "live" hearing, the magistrate, nevertheless, had the benefit of the audio visual deposition and the written transcript to make a credibility assessment. There is no evidence in the record to demonstrate the magistrate's ability to do so was hindered in any manner. Hence, substantial deference is owed to the magistrate's credibility finding of Ms. Williams's testimony during the deposition. *Vinal*, 13 Mass. App. Ct. 85, 430 N.E.2d 440 (1982).

Because we determined that Ms. Williams met her burden to establish that her claimed injury was the natural and proximate cause of her permanent disability as of her last day of work, we do not need to address the issue of whether her daily activities were common and necessary to all or a great many occupations resulting in a gradual deterioration of her condition.

Conclusion

[11] Ex. 34.

Ms. Williams has met her burden of proof for entitlement to accidental disability retirement benefits pursuant to G.L. c. 32, § 7. The DALA decision is affirmed.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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