

## COMMONWEALTH OF MASSACHUSETTS

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Jeremy Wilson,**  
Petitioner,

No. CR-24-0294

Dated: February 21, 2025

v.

**Newton Retirement System,**  
Respondent.

### **Appearances:**

For Petitioner: Jeremy Wilson (pro se)

For Respondent: Jaclyn Zawada, Esq.

### **Administrative Magistrate:**

Yakov Malkiel

## SUMMARY OF DECISION

The petitioner, a police officer, injured his knee while cleaning up a spilled beverage. His evidence, un rebutted and believed, would allow a fact finder to conclude that he suffered his injury “while in the performance of[] his duties,” including a duty to prevent avoidable harm to police property and personnel. The respondent board should have referred the petitioner’s accidental disability retirement application to a medical panel.

## DECISION

Petitioner Jeremy Wilson appeals from a decision of the Newton Retirement System (board) denying his application to retire for accidental disability. The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-10.<sup>1</sup>

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<sup>1</sup> Exhibits 1-6 were offered by Mr. Wilson in August 2024. Exhibits 7 and 8 were offered by the board in October 2024 and January 2025. Exhibits 9 and 10 are Mr. Wilson’s memoranda of August 2024 and November 2024, without their attachments. Mr. Wilson has readopted the statements appearing in those memoranda as testimony subject to the penalties of perjury.

### **Background**

Mr. Wilson’s evidence, unrebutted and believed, would allow a fact finder to find the following facts.<sup>2</sup>

1. Mr. Wilson became a public employee in 1997 and an officer of the Newton police department in 2003. He was assigned to the position of traffic officer. (Exhibits 1, 9.)

2. Mr. Wilson’s job required him primarily to enforce traffic laws, investigate car crashes, and prepare reports. His four-page-long job description enumerated his duties in detail. Among other things, it stated duties to “[m]aintain weapons and equipment in a functional, presentable condition,” and to “[a]ccomplish other general duties as they are assigned or become necessary.” Mr. Wilson and his colleagues were expected to clean their workspaces, cruisers, and other equipment on a daily basis. (Exhibits 1, 6, 9, 10.)

3. At about 8:00 am on July 13, 2022, Mr. Wilson spilled a cup of coffee over his desk and the surrounding floor area. On the desk sat papers, a notebook, and a computer. On the floor sat a bulletproof vest and a camera. Mr. Wilson was concerned that any or all of these items might become saturated and damaged. He also worried that a neighboring colleague, who uses a wheelchair, might slip on the wet floor. The department employed one custodian, who was not in the immediate vicinity. (Exhibits 1, 7, 9, 10.)

4. Mr. Wilson cleaned the coffee spill. While rising from the floor, he twisted his left knee. He experienced stiffness immediately and pain later in the day. (Exhibits 1, 7, 9.)

5. Mr. Wilson saw a doctor two days later. A subsequent MRI disclosed a tear of Mr. Wilson’s meniscus. Surgery, physical therapy, and injections did not alleviate his symptoms. He has trouble squatting, kneeling, and walking. He would not be able to chase

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<sup>2</sup> The governing evidentiary standard is discussed below.

suspects, make arrests, conduct searches, or even stand for sustained periods.

(Exhibits 1-3, 7, 9.)

6. In March 2024, Mr. Wilson applied to retire for accidental disability. In April 2024, the board denied the application without convening a medical panel, reasoning that Mr. Wilson did not suffer his injury “in the performance of [his] duties.” Mr. Wilson timely appealed. (Exhibits 1, 4, 5.)

### Analysis

A public employee is entitled to retire for accidental disability if he or she was permanently incapacitated by an injury or hazard suffered “in the performance of[] [the employee’s] duties.” G.L. c. 32, § 7(1). An applicant’s compliance with this standard is tested through three essential steps: a written application, an examination by a regional medical panel, and a consideration by the local board. *Id.*; *Malden Ret. Bd. v. Contributory Ret. Appeal Bd.*, 1 Mass. App. Ct. 420, 423-24 (1973). The question in this appeal is whether Mr. Wilson may proceed to the second of these steps.

“To be entitled to an examination by a regional medical panel, [the applicant] must . . . provide sufficient evidence that, if unrebutted and believed, would allow a fact finder to conclude that he satisfies the threshold requirements to qualify for accidental disability retirement.” *Sibley v. Franklin Reg’l Ret. Bd.*, No. CR-15-54, 2023 WL 11806176, at \*4 (Contributory Ret. App. Bd. May 26, 2023). *See* 840 C.M.R. § 10.09(2). Because the analysis revolves around the applicant’s case “unrebutted and believed,” the recitation of facts appearing earlier in this decision takes Mr. Wilson’s sworn statements and other evidence as true. Any potential doubts about their accuracy are properly set aside at this time. *See Gonglik v. Westfield Ret. Syst.*, No. CR-21-425, 2024 WL 215938, at \*2 & n.3 (Div. Admin. Law App. Jan. 12, 2024).

The dispute focuses on whether Mr. Wilson suffered his July 2022 accident “in the performance of[] his duties.” G.L. c. 32, § 7(1). The case law has read this phrase literally. It is not enough for an employee to have been walking toward her office, *Namvar v. Contributory Ret. Appeal Bd.*, 422 Mass. 1004, 1004 (1996), or even standing at her desk, *Damiano v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 259, 260 (2008). The employee needs to have been busy with his or her job duties at the precise time of the disabling incident. *See Murphy v. Contributory Ret. Appeal Bd.*, 463 Mass. 333, 350 (2012).

An employee’s job duties are those that the job requires him or her to perform. *See Damiano*, 72 Mass. App. Ct. at 263. Such requirements may flow both from formal employment documents and from supervisors’ work-related directives. *See Retirement Bd. of Salem v. Contributory Ret. Appeal Bd. (Cole)*, 453 Mass. 286, 291 (2009); *Gale v. Contributory Ret. App. Bd.*, No. 93-6003-G, 2000 WL 1466138 (Super. Ct. Sept. 20, 2000); *McDonald v. Boston Ret. Bd.*, No. CR-11-623, 2014 WL 13121822 (Contributory Ret. App. Bd. Oct. 9, 2014). On the other hand, an employee’s job duties do not necessary cover optional courtesies toward coworkers, *Connolly v. Contributory Ret. Appeal Bd.*, 73 Mass. App. Ct. 1127 (2009) (unpublished memorandum opinion), or impromptu acts attenuated from the workplace’s intended functions, *Glynn v. Boston Ret. Syst.*, No. CR-14-295, 2022 WL 22863688, at \*7 (Contributory Ret. App. Bd. Apr. 5, 2022).

When § 7(1) describes incapacitation, it speaks of an employee’s inability to accomplish the job’s “essential” duties. *See* 840 C.M.R. § 10.21. The modifier “essential” is absent from the same section’s description of the duties that the employee needs to have been performing at the time of the accident: any “duties” will do. *See Smith v. Springfield Ret. Bd.*, No. CR-22-163, 2024 WL 4475616 (Div. Admin. Law App. Oct. 4, 2024). It is easy to see that a contrary rule

would create a severe disincentive for public employees to engage in those of their duties that might be viewed as landing outside the “essential” core. It is also easy to imagine the difficulties that might follow for the employing government bodies.

When the foregoing principles are applied to the facts as presented here, it is reasonably clear that Mr. Wilson sustained his accident while performing the duties of his job. His responsibilities as a police officer included a duty to prevent avoidable harm to department equipment. This duty was memorialized briefly in Mr. Wilson’s formal job description. It was built into the department’s officers’ daily routine.

An employer’s reasonable expectations also may play a role in the analysis. In *Cole*, for example, the Supreme Judicial Court held that an employee at a “meeting with a supervisor to discuss a forthcoming job termination”—an event not contemplated by typical job descriptions—was “[c]learly . . . actively engaged in the performance of her duties.” 453 Mass. at 291. Any employer would be predictably and appropriately dismayed by an employee’s failure to attend a termination meeting. Any police department would be predictably and appropriately dismayed by an officer’s failure to prevent a spilled beverage from harming documents, equipment, or personnel. It is difficult to view the ambit of an employee’s job duties as failing to reach actions that the employment relationship clearly and reasonably would prompt the employer to expect and demand. It is hard to imagine that the Legislature meant for § 7(1) to be construed in a manner that would discourage employees from conforming to such expectations and demands.<sup>3</sup>

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<sup>3</sup> The board reports that, at a meeting to discuss his application, Mr. Wilson said, “I understand . . . we probably shouldn’t be cleaning up spills.” That comment may perhaps be interpretable as relating to what the police department’s officers’ duties *should* have been, as oppose to what those duties actually *were*. Regardless, at this preliminary juncture, an off-the-cuff remark that Mr. Wilson has since rethought, clarified, and supplemented is insufficient to defeat the prima facie case made out by his evidence taken as a whole.

**Conclusion and Order**

The board's decision is VACATED. The matter is remanded to the board with instructions to arrange for a medical panel to be convened. Any findings of fact stated in this decision are not intended to be binding on the board in the event of any post-panel proceedings. *See St. Martin v. State Bd. of Ret.*, No. CR-21-0258, 2023 WL 1824049, at \*3 (Div. Admin. Law App. Feb. 3, 2023).

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate