

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Mark Wood,
Petitioner

v.

Docket No. CR-18-0578

Weymouth Retirement Board,
Respondent

Appearance for Petitioner:

Morgan J. Gray, Esq.

Appearance for Respondent:

Michael Sacco, Esq.
Christopher J. Collins, Esq.

Administrative Magistrate:

James P. Rooney

Summary of Decision

Retirement board's denial of a member's application for disability retirement without sending the member to be examined by a medical panel because the board did not believe he suffered a job-related injury is reversed. The applicant presented a prima facie case that he was injured when he fell off a truck while working.

DECISION

Mark Wood, a former maintenance worker for the Weymouth Housing Authority, appeals the October 15, 2018 decision of the Haverhill Retirement Board denying his application for accidental disability retirement without sending him to be examined by a medical panel. The Board based its decision on its belief that Mr. Wood did not suffer a work injury on the date he claimed and that his disability is related to degenerative disease, not a work-related injury.

I held a hearing on September 1, 2022 and March 21, 2023 at the Division of Administrative Law Appeals (DALA), which was digitally recorded. The parties filed a joint prehearing memorandum that included stipulated facts. I have marked it as Pleading A. I ultimately accepted 39 exhibits proposed by the parties into evidence. Mr. Wood testified, as did Timothy Rodick, another former maintenance worker with the Weymouth Housing Authority; Jeanette Ray, the assistant director of the Housing Authority; and Daniel Mulhern, the maintenance supervisor for the Housing Authority. Each party filed a closing brief. The Board filed a supplemental memorandum on February 12, 2024, thereby closing the record.

Mr. Wood seeks to have this matter remanded to the Retirement Board so that he can be evaluated by a medical panel. To prevail, he must make out a “prima facie case,” meaning that he must show facts that if unrebutted and believed would establish that he was disabled, the disability was permanent, and the disability was caused by an injury suffered while he was working at his job. *Lowell v. Worcester Regional Retirement Bd.*, CR-06-296, *23 and 24 (Div. of Admin Law App., Dec. 12, 2009).

Findings of Fact

The evidence presented by Mr. Wood that, if unrebutted and believed, would support the following findings of fact:

1. Mark Wood began his employment as a maintenance worker/laborer with the Weymouth Housing Authority on October 19, 2015. The position was physically challenging. It involved landscaping, including snow removal, trash removal, and operating various landscaping equipment. (Stipulations 1-3.)

2. In July 2016, Mr. Wood began experiencing neck and right upper arm pain while performing work overhead, such as painting or working under sinks. On July 20, 2016, he sought treatment. An MRI revealed degenerative changes in his cervical spine. (Wood testimony; Ex. 14.)

3. On August 3, 2016, Mr. Wood and Timothy Rodick were vacuuming up leaves along a fence. When the truck in which they were placing the leaves was full, Mr. Wood, by himself, drove the truck to the location of a compost pile where the leaves were to be dumped. The pipe through which the leaves were to flow became stuck, leading Mr. Wood to climb onto the top of the truck to pull the pipe into the proper position. He slipped on the wet hood of the truck and fell to the ground, hitting his right shoulder. He drove back to where Mr. Rodick was, told him about the fall, and then called Daniel Mulhern, the maintenance supervisor, and told him about the fall as well. Mr. Rodick confirmed that Mr. Wood told him and Mr. Mulhern about his fall. (Wood and Rodick testimony; stipulation 4.)

4. Mr. Wood did not experience symptoms immediately after the fall but started to feel pain later in the day. Two days later, Benjamin Simms, N.P., treated Mr. Wood for neck pain. Mr. Wood was diagnosed with cervical radiculopathy with foraminal stenosis and arthritis in the cervical spine. (Ex. 14.)

5. Mr. Wood did not file an injury report right away. At the time, he thought that, if he needed to file such a report, his supervisor would provide it. Mr. Wood thought he had a good relationship with the Housing Authority director, Michael Flaherty, before his injury but the director became standoffish thereafter. Mr. Wood did not want to push his luck with Mr. Flaherty, who reportedly did not like it when workers were off work. Thereafter, Mr. Wood

kept Mr. Mulhern informed of his medical appointments to treat his neck pain. (Wood and Rodick testimony.)

6. On November 18, 2016, Mr. Wood had a C5-C7 anterior cervical discectomy and fusion performed by Raymond Wang, M.D. at New England Baptist Hospital. (Ex. 14.)

7. Mr. Wood returned to work on February 15, 2017 and left permanently on December 18, 2017 because of ongoing neck pain. (Wood testimony; stipulations 10-12.)

8. On May 11, 2018, Mr. Wood filed for accidental disability retirement. (Stipulation 16.) In it, he stated that he suffered a cervical injury on August 3, 2016 that left him “unable to lift any significant weight” and with “limited rotation of his cervical spine.” He also stated that he ended his 2017 effort to return to work because he “could no longer tolerate the pain and restricted range of motion.” (Ex. 1.)

9. Mr. Wood’s application was supported by a physician’s statement prepared by David G. Heller, M.D., who is an orthopedic surgeon. Dr. Heller diagnosed Mr. Wood with cervical radiculopathy and impingement syndrome of his right shoulder. He thought Mr. Wood was permanently incapacitated from performing his job because he could not perform such essential duties such as lifting, pulling, pushing, reaching or climbing. He attributed this disability to Mr. Wood’s fall from a dump truck. (Ex. 2.)

10. On October 15, 2018, the Weymouth Retirement Board denied Mr. Wood’s application, stating that “The Board does not believe there is sufficient evidence to support the Petitioner’s claim of cervical injury on August 3, 2016 from falling off the hood of a dump truck.” (Stipulation 21; Ex. 4.) Mr. Wood filed a timely appeal. (Stipulation 22; Ex. 5.)

Discussion

To receive accidental disability retirement benefits, an applicant must prove by a preponderance of the evidence that he is totally and permanently incapacitated from performing the essential duties of his position because of an injury sustained or hazard undergone while in the performance of his duties. M.G.L. c. 32, § 7; *Donnelly v. State Bd. of Retirement*, Docket No. CR-08-312, at *8 (DALA Aug. 26, 2010). No application may be approved until the applicant has been examined by a medical panel whose function is to determine medical questions that are beyond the common knowledge and experience of a local retirement board. *Malden Retirement Bd. v. Contributory Retirement App. Bd.*, 1 Mass. App. Ct. 420, 423 (1973).

However, not all accidental disability retirement applicants are examined by a medical panel because “[a]t any stage of a proceeding on an ordinary or accidental disability retirement application the retirement board may terminate the proceeding and deny the application if it determines that the member cannot be retired as a matter of law.” 810 CMR 10.09(2).

An applicant appealing from such a denial and seeking a remand for a medical panel evaluation must follow an approach described by Magistrate Mark Silverstein in 2009. *Lowell v. Worcester Regional Retirement Bd.*, CR-06-296, *23 and 24 (Div. of Admin Law App., Dec. 12, 2009). He observed that prior decisions of DALA and the Contributory Retirement Appeal Board:

suggest that the applicant must make out a prima facie case showing that she qualifies for accidental disability retirement benefits in order to secure examination by a regional medical panel. These decisions suggest further that making the required prima facie case requires competent evidence showing that the disability is permanent and resulted from injuries sustained by the applicant while in the performance of her duties.

Id. at 23.

Based on this evaluation of prior case law, Magistrate Silverstein determined that a town official who claimed she has suffered a disabling emotional injury on the job had to present:

sufficient evidence that, if unrebutted and believed, would allow a factfinder to conclude that she suffered a permanent disability based upon emotional injuries sustained while performing her duties as town treasurer/collector that were not the result of bona fide personnel action and is therefore entitled to accidental disability retirement benefits.

Id. at 24. Magistrate Silverstein then examined the evidence presented by Ms. Lowell to see if, unrebutted and believed, it would allow a factfinder to conclude that the town had caused her an emotional injury by the way it treated her on the job and that the town's actions were not bona fide personnel actions. *Id.* at 24-28.

The Contributory Retirement Board has confirmed repeatedly that the proper approach to determining whether to send an application to a medical panel is to examine the applicant's prima facie case. See *Beliveau v. Worcester Regional Retirement Bd.*, CR-17-21 (Cont. Ret. App. Bd., Feb 5, 2025); *Sibley v. Franklin Regional Retirement Bd.*, CR-15-54 (Cont. Ret. App. Bd., May 26, 2023); *Hickey v. Medford Retirement Bd.*, CR-08-380 (Cont. Ret. App. Bd., Feb. 16, 2012).

Magistrate Forton has described what the applicant needs to prove as a "threshold showing." *Church v. Marblehead Retirement Bd.*, CR-10-38 *18 (Div. of Admin. Law App., July 26, 2013). This is consistent with descriptions by the courts of the meaning of prima facie case. In evaluating a prima facie showing, courts (and DALA) act as a data collector of facts that would support a prima facie case, not as an evaluator of competing facts.. *Cepeda v. Kass*, 62 Mass. App. Ct. 732, 737-38, 819 N.E.2d 979, 984 (2004). "In conducting the requisite analysis under the prima facie standard, we take specific facts affirmatively alleged by the plaintiff as

true (whether or not disputed) and construe them in the light most congenial to the plaintiff's jurisdictional claim." *Massachusetts Sch. of Law at Andover, Inc. v. American Bar Assn.*, 142 F.3d 26, 34 (1st Cir.1998). The burden is one of production, not one of persuasion. "[P]rima facie evidence ... [is] evidence which, standing alone and unexplained, maintains the proposition and warrants the conclusion to support which it is introduced." *Thomes v. Meyer Store, Inc.*, 268 Mass. 587, 588, 168 N.E. 178 (1929).

Mr. Wood presented the following evidence: he fell off a dump truck while performing a work duty, suffered an injury that aggravated his underlying cervical condition and caused an impingement of his right shoulder. He ultimately needed surgery on his cervical spine. He attempted to return to work thereafter but had to give up that effort because of persistent neck pain that interfered with his ability to work as a maintenance worker/laborer. Mr. Wood's evidence, if believed and unrebutted, would show that he suffered a disabling injury while working and that it has left him permanently disabled from performing his job for the Weymouth Housing Authority. He therefore has presented sufficient evidence to establish a prima facie and thus, that he should be examined by a medical panel.

The Board maintains that simply examining plaintiff's case impermissibly interferes with its ability to reject an accidental disability retirement application without sending it to a medical panel if it determines that the member cannot be retired as a matter of law. That is not so. An applicant may present insufficient evidence to establish a prima facie case, or he may present evidence that reveals an indisputable reason to reject the application as a matter of law. *See, e.g., Commonwealth v. Carter*, 488 Mass. 191, 198 (2021) (defendant's scant evidence did not

rise to the level of establishing a prima facie case); *Commonwealth v. Cavotta*, 48 Mass. App. Ct. 636, 639 (2000) (same).

Thus, when a truck driver/laborer sought accidental disability retirement based on permanent injuries to the rotator cuffs in both his shoulders caused by the repetitive heavy work activities, the Contributory Retirement Appeal Board determined that his retirement board had properly denied his application as a matter of law because he needed to show that his job involved an identifiable and uncommon condition, which he failed to do because repetitive heavy work activities is common to many jobs. *Sibley v. Franklin Regional Retirement System*, CR-15-54, *7-8 (Cont. Ret. App. Bd. May 26, 2023) (aff'd *Sibley v. Contributory Retirement Appeal Bd.*, 105 Mass. App. Ct. 1126, May 5, 2025).

In *Sibley*, the evidence the applicant presented failed to establish a prima facie case. An effort by a board to dispute the prima facie case that an applicant has established is of no avail at this stage. For example, in an appeal in which a retirement board denied accidental disability retirement to a police officer who sought retirement based on post-traumatic stress syndrome, his retirement board argued that it had properly declined to send the applicant to a medical panel because the officer failed to mention in his job application that he suffered from PTSD following his military service. Because the issue was whether the applicant had made out a prima facie case regarding that issue, Magistrate Malkiel accepted the officer's explanation that his military-service-related PTSD had resolved before he applied to become an officer and the PTSD he suffered as an officer was related solely to his work in the police department. *Internicola v. Saugus Retirement Bd.*, CR-20-0385, *6, 2022 WL 17081180 (Div. of Admin. Law App. Nov. 10, 2022).

Despite the need to evaluate only Mr. Wood's prima facie case at this juncture, the Board makes two arguments as to why it was still justified in denying Mr. Wood's application as a matter of law. First, it does not believe that Mr. Wood fell off a truck on August 3, 2016. That is obviously not what Mr. Wood contends and hence cannot be part of the evaluation to determine whether to send Mr. Wood to be evaluated by a medical panel.

Second, The Board contends that the condition Mr. Wood claims disables him is no different than the condition he was diagnosed with in July 2016 and is thus not related to an injury.¹ This is exactly the sort of medical issue for a medical panel to consider in the first instance.

What the Board is essentially arguing is that it can determine credibility as a matter of law. That may be theoretically possible, but generally credibility is left the factfinder to weigh as is not decided as a matter of law.² That means that when facing an application in which

¹ The Board also maintains that Mr. Wood needn't have climbed on the truck to fix the problem he allegedly faced. I have ruled numerous times that it is not the role of retirement boards to kibitz post-accident the way an employee chose to perform a work task. *See Perry v Marblehead Retirement Bd.*, CR-19-0578 at *20 (Div. of Admin. Law App., Nov. 19, 2021)(the retirement statute does not "contemplate retirement boards second-guessing the manner in which employees performed their duties") The retirement statute bars an injured employee from recovery only if he was engaged in "serious and willful misconduct" at the time of the injury. *See* M.G.L. c. 32, § 7(1). There was no obvious serious and willful misconduct by Mr. Wood in this instance.

² The Board has cited a recent decision in which a DALA magistrate questioned an applicant's credibility and thus affirmed a retirement board's decision to deny an accidental disability retirement application as a matter of law. *See Vigneaux v. Essex Regional Retirement Bd.*, CR-21-0413 (Div. of Admin. Law App. Feb 16, 2024). The decision does not discuss the general standard for review of retirement board decisions declining to send an application to a medical panel. The magistrate identified two problems with the applicant's prima facie case: his application did not match his physician's statement, which by itself would make his prima facie case insufficient. As for the applicant's credibility, the magistrate found his testimony about the nature of his disability was a "moving target," and thus his prima facie case lacked clarity.

there are concerns about the applicant's credibility, boards will lack a sufficient basis to deny the application as a matter of law, but once the medical has examined the applicant, the board may consider the applicant's credibility as a matter of fact, this time with the further information provided by the medical panel's report. *See, e.g., St. Martin v. State Bd. of Retirement*, CR-21-0258 (Div. of Admin. Law App., Feb. 3, 2023) (dispute over whether an applicant for accidental disability retirement had fallen and injured himself while performing a work task was not a valid reason for his retirement board to decline to send his application to a medical panel because his prima facie case was that he fell while performing his job).

I do not question that the Board had reason to doubt Mr. Wood's truthfulness. Mr. Wood did not tell his doctors for quite some time that he had fallen off a truck. (Ex. 13.) Mr. Mulhern does not remember ever receiving a call from Mr. Wood that he had fallen off a truck. (Mulhern testimony.) Mr. Wood did not file an injury report until 18 months later. (Ex. 10.)

But it is not self-evident that Mr. Wood is lying. He has presented prima facie evidence that he fell from a truck and was injured on August 16, 2016. He testified to this and testified that he informed his co-worker Mr. Rodick of his fall and then called Mr. Mulhern to tell him about the fall. Mr. Rodick confirmed that he was told about the fall by Mr. Wood and that Mr. Wood then phoned Mr. Mulhern and told him about the fall.

Ultimately, Mr. Wood's credibility will have to be determined. But when Mr. Wood filed his application for accidental disability retirement, there was sufficient prima facie evidence to establish the existence of a job-related injury claim that should be sent for medical panel review. And, in this instance, the panel would be able to address the question the Board raises

about whether any injury on August 3, 2016, is the cause of Mr. Wood's disability or whether that disability is related simply to the progression of underlying degenerative disease.

Conclusion

For the reasons just stated, I remand this matter to the Weymouth Retirement Board to have Mr. Wood examined by a medical panel.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

Dated: January 30, 2026

James P. Rooney
First Administrative Magistrate
DIVISION OF ADMINISTRATIVE LAW APPEALS
14 Summer Street, 4th floor
Malden, MA 02148
Tel: (781) 397-4700
www.mass.gov/dala