

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Crystal Wood,
Petitioner,

v.

Docket No. CR-23-0219

Worcester Regional Retirement System,
Respondent.

Appearance for Petitioner:

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Appearance for Respondent:

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Administrative Magistrate:

James P. Rooney

Summary of Decision

The Worcester Regional Retirement System's denial of Crystal Wood's application for an accidental death benefit in connection with the death of her firefighter husband from a heart attack is reversed. The heart law presumption applies because Mr. Wood passed his pre-employment physical without evidence of hypertension or heart-related health problems. The cardiologist who reviewed his medical records after his death applied the heart law presumption and determined that Mr. Wood died of a heart attack and his death was job-related. No competent evidence was introduced to rebut the heart law presumption. Claims that Mr. Wood smoked at the time of his pre-employment physical and likely thereafter are irrelevant to determining the applicability of the heart law presumption.

DECISION

Petitioner Crystal Wood, the widow of Paul James Wood, Jr., who was a firefighter with the Town of Auburn Fire Rescue Department, timely appeals, under M.G.L. c. 32, § 16(4), the decision of the Worcester Regional Retirement System denying her application for accidental death benefits under the public employee retirement statute at M.G.L. c. 32, § 9. Firefighter Wood died of a heart attack at age 42. The Retirement System denied the death benefit application because it had concluded that “there is sufficient evidence to rebut the [heart law] presumption.” (Ex. 13.)

I held a hearing on October 23, 2024, which I recorded digitally. I admitted 16 exhibits into evidence.¹ I marked the joint pre-hearing memorandum “A” for identification. Crystal Wood was the only witness. The Retirement System called no witnesses. Both parties filed post-hearing briefs. Mrs. Wood moved to strike the Retirement System’s brief, which I rule on in the course of the decision. The administrative record closed on December 2, 2024.

Findings of Fact

Based on the documents admitted into evidence, the stipulated facts in the joint prehearing memorandum, and the testimony presented at the hearing, I make the following findings of fact:

1. Crystal Wood met her future husband Paul James Wood, Jr. when they were both juniors in high school. They married in 2004 and had three children. (Wood testimony.)

¹ The parties submitted 13 exhibits with their joint memo. I added a March 27, 2023 email from Mrs. Wood’s counsel to a member of the Retirement System staff (Ex. 14), Mrs. Wood’s appeal letter (Ex. 15), and a letter from Stephen M. Colemand, Jr., the Chief of the Town of Auburn Fire Rescue Department, in support of Mrs. Wood’s application (Ex. 16).

2. Once he graduated from high school, Mr. Wood took steps that he hoped would lead to a career in firefighting. He became an emergency medical technician, then a paramedic. He had been a social smoker, but he knew he would not be eligible to become a firefighter if he smoked.² He gave up smoking in 2006 or 2007. Mrs. Wood is confident that he gave up smoking then because she managed the family's finances and did not see expenses for buying cigarettes nor did she smell cigarette smoke on his breath.³ At around the same time, he gave up drinking to avoid the fate of both his parents, who were alcoholics. He also began to run to become physically fit. (Wood testimony.)

² M.G.L. c. 41, § 101A provides:

Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products; provided, however, that prior to the termination of a police officer or firefighter for a violation of this section, the police officer or firefighter shall be provided with an opportunity to enter a smoking cessation program; provided further, that a subsequent violation may be cause for dismissal. The personnel administrator shall promulgate regulations for the implementation of this section.

The provision concerning smoking cessation programs was added after Mr. Wood became a firefighter.

³ Fire Chief Stephen M. Coleman, Jr. is also confident that Mr. Wood did not smoke while a firefighter. In his letter that is Exhibit 16, he stated:

Paul was hired by the Town of Auburn Fire Rescue Department on July 28, 2008. During his medical physical for initial hire there was never a mention of concern from the doctor that Paul was a smoker. The paperwork we received indicated that he passed his medical physical which was a condition of employment.

Since Paul's hiring in 2008 I never had any reason to believe, suspect or be concerned that Paul was a smoker. Paul participated in early detection cancer screenings with an outside company of medical professionals hired by the town and the issue of smoking was never raised in that setting either.

3. Mr. Wood became a firefighter with the Town of Auburn Fire Rescue Department in 2008. Prior to his hire, he underwent a pre-employment physical. His height was measured at six feet, his weight at 233 pounds, and his body mass index at 31.6. His blood pressure then was 116/76. An electrocardiogram revealed “[m]arked sinus bradycardia.” On a page in which Mr. Wood was asked if he had any of 75 possible health problems, he answered “no” when asked whether he “smoked cigarettes or tobacco products.” The report noted, however, on page 20 that he was a former smoker.⁴ (Ex. 4.)

4. The parties agree that subsequent medical records report that Mr. Wood smoked half a pack a day and that he quit smoking either when he was 30 years old in 2009 or in 2013. (Stipulation.) The parties did not cite the medical records that report these things, nor did they reference any portion of the medical records that state a basis for these statements.

5. By 2014, the medical records show that Mr. Wood was taking blood pressure medications lisinopril and Toprol. These medications appear to have substantially controlled his high blood pressure. For example, on June 12, 2019 his blood pressure was recorded as 130/74. (Stipulation.)

6. Mr. Wood developed other health problems as an adult. By 2015, he had been diagnosed with gout, for which he took allopurinol. He developed post-traumatic stress disorder (PTSD) after being called to a fire in which two little girls died. For a time, he was anxious and could not sleep worrying that he would be called to another fire with a bad outcome. He also was diagnosed with pre-diabetes. Mr. Wood had a physical on December 24, 2019. He weighed 272 pounds. His blood pressure was 128/88. He reported that his PTSD-related anxiety had

⁴ I struck the third page of the pre-employment physical because it was not a record from the 2008 physical. It was a record from 2015.

improved because of weekly visits with a counselor. (Stipulation; Exs. 5 and 6.)⁵ Mr. Wood took the medications he was prescribed and attempted to address his weight with a low carb diet. (Wood testimony.)

7. Mr. Wood's father had diabetes, high blood pressure, and heart disease. He died of a heart attack. His underlying heart problem was congenital. His mother had high blood pressure, until she lost weight. (Stipulation; Wood testimony.)

8. On July 7, 2020, Mr. Wood was promoted to lieutenant. (Wood's brief.)

9. On July 8, 2022, Mr. Wood was at home when he felt unwell. He called Mrs. Wood to report he was going to drive to the fire station to be evaluated and have an EKG performed. After leaving home, at around 5:00 p.m., Mr. Wood crashed his car into a telephone pole close to his home. Emergency medical technicians arrived at the scene to find only minimal damage to the car. They assessed Mr. Wood has crashed at least twenty-five minutes before they arrived and likely fifteen minutes more. The EMTs found Mr. Wood in full cardiac arrest. He was intubated, given epinephrine, and shocked twice en route to the hospital. CPR was continued in the emergency room. Mr. Wood never regained consciousness or a stable cardiac rhythm and was pronounced dead. (Stipulation.) The doctor who examined him at the UMass Memorial-Harrington Hospital thought Mr. Wood "was in the middle of an acute coronary syndrome, and likely arrested shortly after he left home, causing his motor vehicle crash." (Ex. 7.)

10. The medical examiner issued a Declaration of Cause and Manner of Death that stated Mr. Wood's cause of death as "hypertensive cardiovascular disease" and his manner of

⁵ Exhibits 5 and 6 are Mr. Wood's medical records. They were listed separately but filed as one document.

death as natural. The medical examiner had a toxicology report prepared but did not conduct an autopsy. (Ex. 3; Stipulation.)

11. On October 22, 2022, Mrs. Wood filed a petition for accidental death benefits under M.G.L. c 32, § 9. (Ex. 1.)

12. The Retirement System requested that cardiologist Howard Honig, M.D. evaluate Mr. Wood's medical records and offer an opinion on whether his death was caused by high blood pressure and, if so, to what extent his smoking caused his high blood pressure. (Ex. 8.)

13. Dr. Honig offered the following opinion:

Based on my review of the medical records, it is my opinion that Mr. Wood's diagnoses include cardiac arrest/sudden death, with premonitory symptoms of unclear etiology. His diagnoses include hypertension, which appears to have been started in 2014, following his initial evaluation for the fire department in 2008. His medical history was also positive for gout, malignant family history of coronary artery disease, pre-diabetes, and obesity. No cholesterol records are reported for review. He was never given cholesterol medicine by his physicians, but there is a note of a diet for his morbid obesity.

The most likely cause of death was a coronary event, leading to myocardial infarction, or a sudden fatal arrhythmia, related to coronary insufficiency and/or coronary occlusion. The probability of him dying of a cardiovascular event, given his multiple risk factors of history of smoking (which is a cardiovascular risk, despite noting that he had quit), hypertension, pre-diabetes, obesity, and malignant family history of coronary disease (as well as possible or not optimal cholesterol levels, which was not recorded in the record) is over 80%.

There is no clear evidence of another etiology or underlying condition, such as acute pulmonary embolus, which might present with chest pain and chest pressure and shortness of breath or an aortic dissection, which can present with a tearing pain (usually in the back). The most likely reason an autopsy was deferred was due to the backlog of cases in the medical examiner's office and the very high likelihood that this was a cardiovascular death after reviewing the toxicology.

Mr. Wood developed hypertension (and most likely severe coronary disease) during the course of his employment with the Auburn Fire Department. Thus, it is my opinion that his death was causally related to his employment as a Firefighter.

Therefore, it is my opinion that Mr. Wood's cause of death was such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.

(Ex. 9.)

14. The Retirement System asked Dr. Honig for clarification as to the extent that the thought other risk factors played a role in Mr. Wood's death and what he meant when he said that when all factors were combined, Mr. Wood had an 80% chance of dying from a cardiovascular event. (Ex. 10.)

15. Dr. Honig replied:

This is a clarification on Mr. Paul James Wood. There was a question raised by the Board as to whether Mr. Wood's multiple risk factors (including smoking, pre-diabetes, obesity, malignant family history of coronary artery disease, and possibly elevated cholesterol) gave him an 80% probability that he would die from a cardiovascular event.

It is indicated in my report from 1/4/23 that he had a cardiac arrest. Due to multiple risk factors, there was an 80% probability that he had significant coronary artery disease. The complete information of this probability could not be ascertained, since he did not have an autopsy performed.

This, again, is not to say that he had an 80% probability that he would die, but rather that he had a cardiac arrest. There was an 80% probability of this due to his associated medical risk factors. The risk factors are not directly and cannot be determined to be the causal events in his death or in his coronary artery disease.

Mr. Wood died of coronary disease, with no pre-existing conditions prior to his employment, and, thus, he meets the criteria under the Heart Law presumption.

(Ex. 11.)

16. On March 28, 2023, the Retirement System denied Mrs. Wood's application saying, "The Board found that there is sufficient evidence to rebut the presumption." (Ex. 13.)

17. Mrs. Wood appealed. (Ex. 15.)

Discussion

The Board's denial of Mrs. Wood's application for an accidental death benefit occasioned by the death of her firefighter husband is reversed.

M.G.L. c. 32, § 9(1) provides an accidental death benefit to beneficiaries when a retirement board "upon receipt of proper proof, finds that any member in service died as the natural and proximate result of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties."

Although Mr. Wood died while not on duty, Mrs. Wood may recover an accidental death benefit if the heart law presumption of M.G.L. c. 32, § 94 applies. *See Collard v. Worcester Retirement Bd.*, CR-91-1304 (Div. Admin. L. App., Jan. 15, 1993). This section provides that:

Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory system, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department . . . shall, if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.

The person seeking an accidental death benefit has the burden to prove. Typically, proper proof is medical opinion evidence that expresses the cause of death with reasonable medical certainty. *Ellsworth v. Weymouth Retirement*, CR-03-249 (Div. Admin. L. App. LA Nov. 3, 2004). Dr. Honig's opinion that Mr. Wood died of a heart attack and that, per the heart law presumption, the heart attack was related to his job as a firefighter is the sort of proof adequate to support Mrs. Wood's application for an accidental death benefit.

The Worcester Regional Retirement System denied her application saying there was sufficient evidence rebutting the presumption. The denial did not describe this evidence. In its portion of the joint prehearing memorandum, Retirement System counsel at the time argued that

Mr. Wood's heart attack was likely related to this half-a-pack-a-day smoking habit, his obesity, his family history of hypertension and heart problems.

This was not a viable argument. The presence of heart attack risk factors is by itself insufficient to rebut the heart law presumption. *McCurley v Watertown Retirement Bd.*, CR-90-848 (DALA, Apr. 15, 1992).

Moreover, the Retirement System may not base its conclusion on its interpretation of medical evidence without the opinion of a person skilled in medicine to back it up. Proof of the connection or lack thereof between Mr. Woods' death and his job is beyond the common knowledge of a DALA magistrate or a retirement board. If there were conflicting medical opinions, a retirement board (and later a magistrate) could weigh their value to determine which to accept. *Ellsworth*. But here the only opinion is Dr. Honig's that Mr. Woods' death was job-related.

Dr. Honig directly addressed Mr. Wood's risk factors. He conceded that Mr. Wood's various risk factors, presumably including the stresses associated with firefighting, suggested an 80% probability that Mr. Wood had cardiovascular disease. He then went on to say that "[t]he risk factors are not directly and cannot be determined to be the causal events in his death or in his coronary artery disease. . . . Mr. Wood died of coronary disease, with no pre-existing conditions prior to his employment, and, thus, he meets the criteria under the Heart Law presumption. The risk factors are not directly and cannot be determined to be the causal events in his death or in his coronary artery disease." The Retirement System has no medical opinion to the contrary by a qualified medical expert, and hence I cannot accept its unsupported claim that evidence exists to rebut the heart law presumption.

The Retirement System adopted an entirely different position in its closing brief, namely that Mr. Wood's smoking at the time of his pre-employment physical was a condition of impairment of health that precludes reliance on the heart law presumption. This is very different than acknowledging that the presumption applies but arguing that medical evidence rebuts it. Counsel for Mrs. Wood strongly objected to this 180-degree change in the Retirement System's position since it had previously conceded that the heart law presumption applied. He asked that the Retirement System's closing brief be stricken.

Petitioners are entitled to notice of the reason retirement boards deny their application for benefits.⁶ The significant change in the Retirement System's position post-hearing presents a serious notice problem. I decline to strike the closing brief, however, because the issue of when Mr. Wood stopped smoking was the subject of considerable testimony during the hearing and there were some hints in counsel's approach during the hearing that, if Mr. Wood was a smoker at the time he underwent his pre-employment physical, this potentially disqualified his widow from relying on the heart law presumption.

I need not decide the question of adequate notice, however, because I find the Retirement System's argument to be without merit.

⁶ M.G.L. c. 30A, § 11(1) provides that in adjudicatory proceedings:

Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

While this section anticipates that there may be some circumstances in which it may be impractical to provide notice of some issues until the hearing itself, waiting until after the hearing to provide notice would not seem to be acceptable.

The Retirement System's argument is based on two premises: 1) Mr. Wood was a smoker when he underwent his pre-employment physical and continued to smoke half-a-pack-a-day for years thereafter and 2) an expansive reading of the heart law presumption in which risk factors other than hypertension and heart disease could negate the applicability of the heart law presumption.⁷

The Board's evidence about Mr. Wood's smoking habits is at best weak. It relies entirely on some references in Mr. Wood's medical records that suggest he continued to smoke after he became a firefighter. Even presuming that the medical records are based on something Mr. Wood told his doctors, since he is no longer with us, we have no way of knowing whether he had an accurate memory of when he stopped smoking.

The rest of the evidence shows that he stopped smoking before he became a firefighter. There are two references to smoking in the record of his pre-employment physical. He answered no in response to an inquiry as to whether he "smoked cigarettes or tobacco products." The question was ambiguous as to whether he had ever smoked cigarettes (which he had) or whether he was a smoker when he answered the question. Any ambiguity was cleared up when the report of the physical later described him as a former smoker. (Finding 3.) Mrs. Wood, who had married Mr. Wood before he became a firefighter, had a clear memory that he stopped smoking before he became a firefighter and that she did not smell smoke on his breath after he became a

⁷ The Retirement System also made a brief stab at arguing that Mr. Wood's pre-employment physical revealed that he had a heart-related health problem because he was diagnosed with sinus bradycardia. "Sinus bradycardia is a heart rhythm that's slower than expected (fewer than 60 beats per minute in an adult) but is otherwise normal. It is sometimes a symptom of certain heart conditions or problems, but it can also be a sign that a person is in very good shape because of regular exercise." Cleveland Clinic, Sinus Bradycardia, <https://my.clevelandclinic.org/health/diseases/22473-sinus-bradycardia>. (last accessed December 19, 2024). There is no evidence in the record that Mr. Wood's slow heartbeat was related to a health problem. Because Mrs. Wood testified that he took up running before he became a firefighter, this more likely this shows that Mr. Wood was in good shape then.

firefighter. Also, as the spouse who managed the couple's finances, she saw no charges that were consistent with buying cigarettes to smoke at the rate of half-a-pack-a-day. (Finding 2.)

Auburn Fire Chief Stephen M. Coleman, Jr. also stated that he "never had any reason to believe, suspect or be concerned that Paul was a smoker." (Finding 2, fn. 3.)

But whatever the evidence had shown about Mr. Wood's smoking habits, that would be of no particular consequence because such evidence is not relevant to the determination of the applicability of the heart law presumption. That heart law presumption, by its terms, does not apply if a pre-employment physical reveals that a candidate to become a firefighter already has hypertension or a heart-related health problem, not a smoking problem. The Retirement System would read it more broadly arguing that the heart law presumption does not apply if a pre-employment physical reveals "any condition of impairment of health," including risk factors for heart disease. That reading is not supportable.

The "any condition of impairment of health" is part of the language in the heart law presumption, but it does mean what the Retirement System think it means. The relevant language in M.G.L. c. 32, § 94 is:

any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department . . . shall, if he successfully passed a physical examination on entry into such service, . . . which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.

The "any condition of impairment of health" language is immediately followed by "caused by hypertension or heart disease." This language focuses on the types of disabling or lethal conditions to which the heart law presumption applies, which are only those caused by hypertension or heart disease. The later language that the pre-employment physical "failed to reveal any evidence of such condition" shows that the only health issues revealed in the pre-

employment physical that would negate the applicability of the heart law presumption refer to existing hypertension or heart-related health problems, not to risks that might lead to such health problems.

Conclusion

The evidence shows that Firefighter Paul James Wood, Jr. died of a heart attack, and because the heart law presumption applies, Crystal Wood, his widow, is entitled to receive an accidental death benefit under M.G.L. c. 32, § 9(1). Accordingly, the decision of the Worcester Regional Retirement System is reversed, and the Retirement System is directed to provide Mrs. Wood that benefit.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney

James P. Rooney
First Administrative Magistrate

Dated: December 20, 2024