COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Shawn Woodward,
Petitioner

v. Docket No. CR-22-0501

State Board of Retirement,
Respondent

Appearance for Petitioner:

Paul Danahy, Esq.
Law Offices of Paul Danahy
420 Washington St., Suite 400
Braintree, MA 02184

Appearance for Respondent:

Yande Lombe, Esq.
State Board of Retirement
One Winter St., 8th Floor
Boston, MA 02108

Administrative Magistrate:

Timothy M. Pomarole, Esq.

SUMMARY OF DECISION

The petitioner appeals the decision by the State Board of Retirement ("Board") to deny his application for accidental disability retirement without first referring the matter to a medical tribunal. In brief, the petitioner, a former parole officer, asserts that he received a death threat on his cell phone while at the prospective residence of a parolee. Then, several days later, he asserts his steering wheel sustained sudden damage while he was driving from his office to a parolee's home, which he attributes to a projectile of some kind passing through the open windows of his car. He believes that these incidents were connected to his work. He claims permanent disability on the ground of post-traumatic stress disorder.

The crux of the Board's denial is that the petitioner has not proved that the events he described actually occurred or that they meet the legal standards for "a personal

injury sustained" as a "result of, and while in the performance of, his duties." The decision is reversed. At this stage of the proceedings, the petitioner's account of what he personally witnessed is assumed to be true and unrebutted. Accordingly, although the ultimate finder of fact may consider the absence of corroborative evidence, that is not relevant here. Moreover, the opinion of a medical panel may bear on the credibility of the petitioner's account. The petitioner's conclusion that these incidents are connected to his work is not entitled to a presumption of truth, but I cannot say the ultimate factfinder would be bound to reject that inference. Based on the foregoing, the petitioner has made out a prima facie case that he sustained a personal injury as a "result of, and while in the performance of, his duties."

DECISION

The petitioner, Shawn Woodward, appeals the decision of the State Board of Retirement ("the Board") to deny his application for accidental disability retirement without convening a medical panel. I conducted an in-person hearing on March 28, 2024. Mr. Woodward was the sole witness. I admitted into evidence Exhibits 1-12. The parties' agreed-upon facts will be cited by paragraph number as "(AF, ¶ __)."

Both parties submitted post-hearing memoranda on May 13, 2024, whereupon the administrative record was closed.

FINDINGS OF FACT

For reasons set forth more fully in the next section, the following facts are drawn principally from the evidence offered by Mr. Woodward, believed and unrebutted:[1]

1. Mr. Woodward worked as a parole officer starting in May 2019. (AF, ¶ 3).

[1] In brief, this decision is limited to determining whether Mr. Woodward has made out a prima facie case that he is entitled to retire for accidental disability, which would oblige the Board to refer his application to a medical panel. Consequently, nothing in this decision should be construed as a finding of fact "that would preempt the Board's post-panel determination of benefits eligibility, including the fact-finding upon which its determination will be based." *Lowell v. Worcester Reg. Ret. Bd.*, CR-06-296 (DALA Dec. 4, 2009).

2. Mr. Woodward's duties as a parole officer included conducting onsite home inspections/investigations of prospective sponsors with whom parolees were proposing to reside. Mr. Woodward would also conduct routine checks on parolees to monitor their compliance with terms of their parole. (AF, ¶ 3).
3. Mr. Woodward had prior work experience as a Correction Officer with the Massachusetts Department of Correction. He had also served in the United States Army for five years. (AF, ¶ 4).
4. As a parole officer, Mr. Woodward was required to carry a firearm. (Exhibit 9).
5. Mr. Woodward experienced post-traumatic stress disorder in the past. This arose from his military service. He received treatment for this condition and reportedly recovered. (Exhibit 1; Exhibit 5A).
6. On October 6, 2020, Mr. Woodward took what he believed to be a personal call on his personal cell phone while checking the suitability of a proposed residence for a parolee. The voice was electronically altered, and the person threatened to kill him and his family members. The caller said (accurately) that he knew that Mr. Woodward was in Lynn. (Testimony; Exhibit 8; Exhibit 11A).
7. Mr. Woodward called his supervisor and his town's police department. (Testimony; Exhibit 8).
8. A unit at Mr. Woodward's office – perhaps the gang or warrant unit – traced the call to an out-of-service number in Pennsylvania. (Testimony).
9. On the afternoon of October 14, 2020, Mr. Woodward left the office and drove his state vehicle a short distance (described as a couple of blocks) to the home of a parolee. Both front windows of the car were rolled down. Something went

through one window and out the other. Mr. Woodward did not pay any particular attention to this, thinking it may have been an insect. When he reached his destination, Mr. Woodward noticed a quarter-of-an-inch chunk missing from his steering wheel. Mr. Woodward surmised that his car had been shot at, perhaps with an airsoft gun or BB gun. (Testimony; Exhibit 8; Exhibit 9).[2]

10. Mr. Woodward had not seen any damage to his vehicle when he had entered it. He was attentive to the condition and appearance of the vehicle and would have noticed if something was wrong with the steering wheel. (Testimony).
11. Mr. Woodward reported this incident to his work and to the police. (Exhibit 7; Exhibit 9).
12. No pellets or casings were recovered from the vehicle. (Testimony; Exhibit 6).
13. Mr. Woodward was traumatized by this incident, which he thought was connected to the threats he had received on October 6, 2020. Mr. Woodward believes that both of these incidents were related to his work as a parole officer. (Testimony; Exhibit 1).
14. Mr. Woodward enjoys positive relationships in his personal life. (Testimony).
15. October 14, 2020 was the last day on which Mr. Woodward performed his work duties. (Testimony).
16. On or about March 15, 2022, Mr. Woodward filed his application for accidental disability retirement, claiming disability based on "post-traumatic stress and anxiety." (Exhibit 1).

[2] The record contains references to a photograph of the damaged steering wheel. The record does not appear to contain a copy of this photograph.

17. In a letter dated November 2, 2022, the Board declined to refer his application to a medical panel and denied it. (Exhibit 2).
18. Mr. Woodward timely appealed the Board's decision to this Division. (Exhibit 4).

CONCLUSION AND ORDER

G.L. c. 32, § 7(1) allows for accidental disability retirement, provided that a qualified member (1) "is unable to perform the essential duties of his job" and (2) "such inability is likely to be permanent before attaining the maximum age for his group," (3) "by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties." The applicant bears the burden of proving entitlement to accidental disability retirement by a preponderance of the evidence. *Lisbon v. Contributory Retirement Appeal Bd*., 41 Mass. App. Ct. 246, 255 (1996).

An applicant cannot be approved until he or she has been examined by a medical panel whose function is to render opinions on medical questions outside the lay competence of retirement boards. *Malden Ret. Bd. v. Contributory Retirement Appeal Bd.*, 1 Mass. App. Ct. 420, 423 (1973). Although a retirement board may deny an application for disability retirement at any stage of the proceedings if it determines that "the member cannot be retired as a matter of law," 840 CMR §10.09(2), a board should not deny a claim for accidental disability retirement without referring the matter to a medical panel if the applicant has made out a prima facie case that he or she is entitled to benefits. *Traynor v. Gloucester Ret. Bd.*, CR-20-0281, 2023 WL 8170656, at *4-5 (DALA Nov. 17, 2023).

To establish a prima facie case, the applicant must produce "sufficient evidence

that, if unrebutted and believed, would allow a factfinder to conclude that [the member] . . . is entitled to accidental disability retirement benefits." *Lowell v. Worcester Ret. Bd.*, CR-06-296, at *25 (DALA Dec. 4, 2009). "Proof of a prima facie case requires 'evidence that, until its effect is overcome by other evidence, compels the conclusion that the evidence is true,' and shifts the burden of producing contradictory evidence to the other side, whether at trial or upon a dispositive motion[.]" *Leonard v. Boston Ret. Sys.*, CR-12-596, at *40 (DALA Aug. 27, 2021) (quoting *Burns v. Commonwealth*, 430 Mass. 444 (1999)). Thus, a tribunal considering whether a party has made a prima facie case acts as "a data collector, not as a fact finder." *Cepeda v. Kass*, 62 Mass. App. Ct. 732, 737–38 (2004) (internal quotation marks and citations omitted). To put it another way, the party's "burden is one of production, not one of persuasion." *Id.* at 378.

In some instances, the evidence offered by the applicant, although "believed and unrebutted," nevertheless falls short of establishing a prima facie case. *See Walsh v. Malden Ret. Bd.*, CR-19-517, 2024 WL 215930 (DALA Jan. 12, 2024) (deciding that because applicant's evidence "believed and unrebutted" showed that he could perform the "essential duties" of his position, he could not retire for accidental disability); *Gonglik v. Westfield Ret. Sys.*, CR-21-425, 2024 WL 215938 (DALA Jan. 12, 2024) (concluding that board correctly declined to refer matter to medical tribunal where the "retirement application – believed, unrebutted, and liberally construed – told the board that he was seeking to retire in 2021 based on three incidents that occurred in 2007, all unaccompanied by contemporaneous notice of injury"). In such cases, no purpose would be served by forwarding the application to a medical panel because the claim would fail regardless of what the medical panel might say.

By contrast, a board should not deny an application without a medical panel referral based on its own assessments of the medical facts. As Magistrate Bresler has observed, "a retirement board cannot serve as a pre-medical panel to decide that for medical reasons, a medical panel need not examine an applicant." *Perry v. Marblehead Ret. Bd.*, CR-14-573, at *5 (DALA Oct. 14, 2016) (*aff'd* CRAB Nov. 28, 2018).[3] Moreover, when "the medical panel's review is, or at least might be, relevant to the issue of the Petitioner's credibility," an application should not be denied without a medical panel review. *DeFelice v. Norfolk County Ret. Bd.*, CR-08-200, at *7 (DALA Aug. 24, 2012).

In *DeFelice*, the local retirement board argued that the petitioner, who had claimed a work-related shoulder injury, had not established a prima facie case because he "did not ultimately prove that he suffered an injury at work." *DeFelice*, *supra*, at *8. This argument was based on the petitioner's "frustrating inability to give a coherent employment history at the hearing," his failure to produce medical records covering time periods preceding claimed injury, and "the fact that there was no eyewitness to the claimed injury." *Id.* at *8-9. The board argued that the magistrate would have been "required to deny his claim as a matter of law regardless of what the medical panel determined." *Id.* Chief Magistrate Heidlage disagreed. He rejected the suggestion that he "would be precluded from finding [the petitioner] credible as a matter of law," noting that the issues identified by the board would be considered by the ultimate factfinder. *Id.*

[3] Nevertheless, there are circumstances where an application is so medically threadbare that a board may be warranted in concluding it fails to make out a prima facie case. *See Hickey v. Medford Ret. Bd.*, CR-08-380, at *8 (DALA Aug. 12, 2011) (*aff'd* CRAB Feb. 16, 2012) (three physicians' statements lacked narratives that proffered any support or explanation for their determination of disability, permanence, or causation).

at *9. Chief Magistrate Heidlage added: "It is also likely that the medical panel's report will contain evidence that, combined with the Petitioner's own testimony and the exhibits, will be relevant to the petitioner's credibility and the ultimate outcome of this case." *Id.*

A more recent decision, *St. Martin v. State Bd. of Ret.*, CR-21-0258, 2023 WL 1824049 (DALA Feb. 3, 2023), undertakes a similar analysis. There, the member sustained a concussion at work. *Id.* at *4. The Board evidently denied the accidental disability retirement claim without referring the matter to a medical panel on the ground that the injury did not occur as a result of or in the furtherance of his work duties. In the immediate aftermath of the incident, the petitioner told a co-worker that he had been reheating a pizza. *Id.* at *1-2. At the hospital, he stated that he had no memory of the incident. Later, however, he stated that he had eventually recovered his memory of the event and that he recalled that he had been gathering work papers. *Id.* The magistrate observed that in determining whether the petitioner had made out a prima facie case warranting referral to a medical panel, his role was not to "resolve the conflicting testimony." Moreover, because the petitioner's memory may have been impacted by his concussion, assessing the petitioner's credibility required understanding the effects of post-concussion syndrome on memory, information that could be supplied only by a medical panel. *Id.* at *4.

Turning to this case, there does not appear to be any dispute that Mr. Woodward has made out a prima facie case that he is incapacitated from performing the essential responsibilities of his position or that such incapacity is permanent. Instead, the Board contends that Mr. Woodward failed to present a prima facie case that the incidents

described by Mr. Woodward actually occurred or that they meet the legal standards for "a personal injury sustained" as a "result of, and while in the performance of, his duties."

With respect to whether the things Mr. Woodward says he saw and heard on October 6 and October 14 actually occurred, the Board remarks that Mr. Woodward's version of events has not been "substantiated separately." (Board's Post-Hearing Brief, at p. 6). At this stage, Mr. Woodward's testimony as to what he saw and heard is entitled to a presumption of truth, even if it was not independently corroborated. The absence of corroboration may be considered, of course, by the ultimate finder of fact. Moreover, a medical panel might well proffer relevant information as to whether Mr. Woodward had, in fact, recovered from his prior PTSD, whether that pre-incident PTSD could have influenced his perceptions of what had occurred on October 6 and October 14, and the likelihood that a disabling PTSD could have arisen without the sort of precipitating incidents he says occurred on those dates.

Mr. Woodward's inferences about the relationship between these two incidents and his conclusions about their relationship to his work stand on a somewhat shakier footing. Although Mr. Woodward's evidence is to be viewed favorably, and I must accept all the reasonable inferences favorable to his claim that may be drawn from that evidence, *Yee v. Massachusetts State Police*, 481 Mass. 290, 300 (2019) (discussing prima facie case standard in employment context) (citation omitted), that does not mean that Mr. Woodward's own conclusions and inferences are themselves evidence, let alone evidence entitled to a presumption of truth. *Cf. Perez v. Volvo Car Corp.*, 247 F.3d 303, 315 (1st Cir. 2001) (observing that evidence sufficient to defeat a motion for summary judgment concerns facts and not "conclusions, assumptions, or surmise"). Nevertheless,

a finder of fact could make the following inferences.

First, a factfinder could permissibly conclude that the damage to Mr. Woodward's steering wheel was caused by something originating from outside the vehicle, a projectile of some kind. Nothing in the record suggests that something inside the vehicle caused the damage, and Mr. Woodward noticed something passing through the open windows of his vehicle.

Second, a factfinder could permissibly conclude that the October 6 and October 14 incidents were related to one another. These two events were unusual and temporally proximate. If the utterance of a death threat is credited, as it must be at this stage, a factfinder could permissibly infer that the incident on October 14 was connected to the violent animus voiced in the October 6 call and was not a random happenstance.

Finally, I cannot say a factfinder would be precluded from inferring that these events resulted from Mr. Woodward's work as a parole officer rather than from personal conflict or a truly random source. Mr. Woodward's personal relationships were good. And Mr. Woodward's work of a parole officer entailed a heightened risk of being subject to violence (evidenced by, among other things, the requirement that he carry a firearm). If a factfinder were to determine that these events occurred, a permissible inference could be drawn that they were more likely to be related to Mr. Woodward's work than to some other factor or circumstance.

To be clear, although a factfinder *could* permissibly draw the inferences mentioned above, the factfinder would not be *required* to draw these inferences. Nor would the failure to draw these inferences be unreasonable.

The foregoing analysis does not end the inquiry because even if Mr. Woodward's

evidence is believed and unrebutted and the aforementioned inferences could be permissibly drawn from that evidence, it must still be determined whether the October 6 and October 14 incidents occurred "as a result of, and while in the performance of, [Mr. Woodward's] duties."

The foregoing discussion establishes that a factfinder could permissibly infer that these incidents would not have occurred were it not for Mr. Woodward's work. This makes out a prima facie case (and, at this stage, only a prima facie case) that these incidents occurred "as a result of" Mr. Woodward's performance of his duties as a parole officer.

The "while in the performance of" requirement is more problematic. As one recent decision observed, a "familiar series of appellate cases has assigned an exceedingly strict meaning to this phrase." *Melichonda v. State Bd. of Ret.*, CR-21-0674, 2024 WL 1486095, at *2-3 (DALA Mar. 29, 2024) (discussing cases). The incident on October 6, which occurred when Mr. Woodward took what he believed to be a personal call on his personal cell phone, had nothing to do with the performance of his job duties. Although the October 6 incident did not occur "while in the performance of" Mr. Woodward's work duties, that is not necessarily fatal to his claim because it appears that it was the October 14 incident that was ultimately disabling. Mr. Woodward returned to work after the October 6 incident; it was only after he experienced the incident on October 14 that he stopped working.

The October 14 incident satisfies the "while in the performance of" requirement. Injuries sustained while the member is in transit from one work location to another location required for work will suffice to constitute an injury "while in the performance

of" one's duties. *Richard v. Worcester Ret. Bd.*, 431 Mass. 163, 165 (2000). The incident on October 14 occurred while Mr. Woodward was driving from his office to the home of a parolee. That is sufficient.

For the foregoing reasons, the Board's decision to deny Mr. Woodward's application to retire for accidental disability without referring the application to a medical panel is reversed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/ Timothy M. Pomarole

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Timothy M. Pomarole, Esq.
Administrative Magistrate

Dated: November 1, 2024