

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

May 25, 2018

Suffolk, ss.

Docket No. CR-13-211

MARK T. ADAMS, Petitioner

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM, Respondent

DECISION

Appearance for Petitioner:

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Appearance for Respondent:

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Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

A former automotive technology teacher filed an accidental disability retirement application in July 2008 based upon a permanent, disabling psychological injury attributed to a student's off-campus suicide in March 2001. The Massachusetts Teachers' Retirement System denied the application. Following a hearing, the denial is affirmed for failure to give the notice of injury required by M.G.L. c. 32, § 7(1) and, in the alternative, for insufficient evidence that the teacher's psychological disability was work-related.

(1) If the student's suicide is considered to be the teacher's work-related disabling injury, its occurrence more than two years before the teacher filed his retirement application, and his failure to give notice of the injury to the retirement board within 90 days, precluded granting the accidental disability retirement he seeks.

(2) The teacher's assertion that he did not understand the connection between the student's suicide in March 2001 and his subsequent psychological deterioration until 2008, and that his duty to give notice to the retirement board therefore did not accrue until then, is without merit. His own testimony and the remainder of the record reveals the teacher's almost-immediate awareness of the suicide's impact on him in 2001-02, even though he did not understand why it had affected him to the degree it did. The teacher also mentioned the student's suicide during his first meeting with a caregiver regarding his relapsed substance abuse and depression in September 2005.

(3) Having to work with or encounter students after the March 2001 suicide was essential to the performance of a fundamental teaching duty, not a series of injuries to, or hazards undergone by, the teacher. Working with or encountering students did not exacerbate, therefore, a psychological injury brought on by the earlier student suicide, and did not create an exception to the two-year notice requirement recited by M.G.L. c. 32, § 7(1) or defer the start of the time for giving notice of injury or hazard undergone. Therefore, even the teacher's interactions and encounters with his students during the two years preceding his July 2008 accidental disability retirement application cannot qualify as psychological injuries sustained or hazards undergone that support an accidental disability retirement.

(4) Although the 2001 student suicide affected the teacher profoundly, he did not show that the suicide or his subsequent psychological deterioration to the point of disability was work-related. In 2001, the student was no longer in the teacher's automotive classes and was spending his senior year taking other courses and working outside the school. A majority of the three-psychiatrist medical panel that examined the teacher concluded that the teacher's psychological disability was not work-related after obtaining the petitioner's medical history, examining him, and reviewing his medical records and job duties, and they stated the grounds on which they issued a negative opinion as to work-related causation. The panel majority performed its function properly, and there was no error or impropriety that justified ignoring its opinion.

Background

Petitioner Mark T. Adams, a former automotive technology teacher at the Greater New

Bedford Vocational Technical High School between 1997 and 2008, appeals, pursuant to M.G.L. c. 32, § 16(4), the March 22, 2013 decision of respondent Massachusetts Teachers' Retirement System (MTRS) denying his 2008 application for accidental disability retirement benefits pursuant to M.G.L. c. 32, § 7. The application was based upon psychological injury— post-traumatic stress disorder, depression and anxiety— claimed to have been brought on by the off-campus March 7, 2001 suicide of a student Mr. Adams had taught and mentored, mostly regarding the student's academic issues. Mr. Adams did not witness the suicide. However, he asserted in his disability retirement application that the suicide had a traumatic effect upon his mental health, worsening over time with his anxiety increasing at “every encounter” with his students until February 2008, when he stopped working because he could no longer work closely with his students or work at all in a school setting. (Exh. 1: Disability Retirement Application, Apr. 25, 2008, at 9.)

In early 2011, a regional medical panel comprising three psychiatrists examined Mr. Adams with respect to this accidental disability retirement application. The panel members agreed that Mr. Adams was permanently disabled; however, a majority of them opined that Mr. Adams's disability was not work-related. Based upon this majority negative panel certificate as to causation, MTRS denied Mr. Adams's accidental disability retirement application (Exh. 21) and approved an ordinary disability retirement for him instead. (Exh. 22.)

Mr. Adams timely appealed MTRS's decision. He claimed that in concluding negatively as to work-related causation, the medical panel majority employed an erroneous standard, did not address the issue of causation sufficiently, and failed to consider material evidence showing causation. He asks that the matter be remanded for evaluation by a new medical panel.

The Division of Administrative Law Appeals (DALA) issued a prehearing order on January 18, 2017. Pursuant to that order, Mr. Adams filed a prehearing memorandum on March 13, 2017, together with 29 proposed hearing exhibits (Exhs. 1-18, 19a-d, 20a-d, and 21-23), and MTRS filed a prehearing memorandum on April 13, 2017, together with three proposed hearing exhibits that I re-marked as Exhs. 24-26, for a total of 32 hearing exhibits.

I held a hearing on August 17, 2017 at the Division of Administrative Law Appeals in Boston. The hearing was recorded electronically. With the parties' agreement, I marked all of the hearing exhibits in evidence.

Neither party presented an opening or closing statement. Mr. Adams testified on his own behalf. MTRS presented no witnesses. Following Mr. Adams's cross, redirect and re-cross examination, I closed the evidentiary record but left the record open for the receipt of post-hearing memoranda. In addition to confirming an agreed-upon filing schedule, I ordered the parties to address, in their respective post-hearing memoranda, whether Mr. Adams had complied with the notice of injury requirements of M.G.L. c. 32, § 7(1). *See Post-Hearing Order* (Aug. 18, 2017). Mr. Adams filed a post-hearing memorandum on October 27, 2017. MTRS filed a post-hearing memorandum on October 30, 2017, which closed the record.

Findings of Fact

a. Personal and pre-teaching work history

1. Petitioner Mark T. Adams was born in 1959. His mother died in an auto accident

when he was four. He and his younger brother lived afterward with an aunt and uncle who, according to Mr. Adams, were verbally abusive and treated him and his brother more harshly than they treated their own children, often denying them play time and making them do household chores instead. (Adams direct testimony; Adams testimony in response to administrative magistrate's questions; *see also* Exh. 2: Dr. Whaley's March 25, 2009 report attached to his statement in support of Mr. Adams's accidental disability retirement application, at 4, which relates Mr. Adams's statement to this physician that the uncle and aunt raised their own biological children differently, and that he and his brother were made to work in the house and were never allowed to play).

2. Mr. Adams attended New Bedford Vocational Technical High School, where his instructional program had an automotive technology focus, and graduated in 1977. He worked in the private sector for several years before becoming a teacher. From February 1979 until March 1989, Mr. Adams worked for Goodyear Tire and Rubber in Dartmouth, Massachusetts, where he rose from entry level to an upper management position. He worked at Firestone-Bridgestone in Dartmouth, Massachusetts from May 1989 until May 1994. From 1994 until 1997, Mr. Adams worked at B.T.S., Inc. Goodyear in Pawtucket, Rhode Island, in a management and/or supervisory capacity. Mr. Adams was successful in his commercial automotive positions, and was assigned the task of reorganizing automotive business locations in the Goodyear and Firestone organizations that were experiencing operational difficulties. (Adams testimony; Exh. 1: Accidental disability retirement application, Apr. 25, 2008, at 4; Exh. 2: Dr. Whaley's notes.)

3. In 1994, Mr. Adams was admitted to a detoxification program at Arbour Hospital (possibly Arbour-Fuller Hospital in South Attleboro, Massachusetts) following excessive drinking.

He had been having “difficulty” with his wife’s family and saw drinking as a way out of this “turmoil,” although the turmoil may have been related to his drinking and related anger, and it was his wife’s family that suggested he enter a detoxification program. Shortly afterward, Mr. Adams either separated from or divorced his wife, and either obtained custody of his two children or assumed responsibility for raising them.¹ (Adams direct testimony; Exh. 2 at 2; *see also* Dr. Whaley’s Mar. 25, 2009 report included with his physician’s statement in support of Mr. Adams’s accidental disability retirement application, at 4.)

4. In 1996, Mr. Adams sustained injuries to his neck and lower back in a motor vehicle accident, and subsequently took pain medications and muscle relaxers to alleviate pain. The pain persisted, and his need for pain medication increased. He still has a back pain problem. (Adams direct testimony; Exh. 2 at 2.)

b. Teaching and teaching duties at Greater New Bedford Vocational Technical High School

5. In 1997, following three years of working part-time as a substitute teacher at Greater New Bedford Vocational Technical High School and attending school at night so he could obtain his Massachusetts teaching license, Mr. Adams began teaching full-time at the school as an automotive instructor, and continued to do so until he last worked at the school in early February 2008. (Adams direct testimony; Exh. 1: Accidental disability retirement application, Apr. 25, 2008, at 4.)

¹/ Mr. Adams was unable to recall whether a court ever issued a divorce decree or custody order, and there is no decree or order in the record.

6. The school specified Mr. Adams's daily job duties and performance responsibilities as an automotive technology teacher. His main daily job duties were implementing the automotive technology curriculum of the school district and the National Automotive Technicians Educational Foundation (duty 1), creating a classroom and lab environment conducive to learning automotive services industry skills (duty 2), establishing a learning climate that promoted orderly student behavior while maintaining student dignity and "positive self-concept," (duty 3), improving student achievement and advancement "through data-driven assessment interventions" (duty 4), establishing student success "as a primary goal" and providing "opportunities for all students to experience success" (duty 5), providing "for the well-being, health and safety of all students" (duty 6), and "build[ing] good interpersonal relationships and establish[ing] positive rapport with students, parents and colleagues (duty 16). (Exh. 4 at 1.) Mr. Adams's performance responsibilities included meeting and instructing assigned students "in designated locations and at designated times," developing and maintaining "an environment conducive to effective learning," preparing for assigned classes, and helping students "to set and maintain standards of appropriate behavior" (responsibilities 1-4). (Exh. 4 at 2.) His performance responsibilities also included implementing "the district's philosophy of education and instructional goals and objectives," taking "all necessary and reasonable precautions to protect students, equipment, materials and facilities," and "[e]valuating students on a continuing basis" (responsibilities 6-8), being "available to meet with students and parents for education related purposes outside the instructional day when required or requested to do so" (responsibility 11), and maintaining "open lines of communication with students and their parents concerning their educational and behavioral progress" (responsibility 15). (Exh. 4 at 2-3.) In short, his job duties and

performance responsibilities as a teacher required that he interact and work with students and make himself available to do so.

7. Mr. Adams got along well with his students at the school, and students approached him frequently as to both curriculum-related issues and “other things” they wanted to discuss. His approach was to listen to a student and do what he thought was right, which might be bringing the student to “department people” to resolve a matter, or making phone calls for them. Students complained to him in particular about another teacher at the school who had a “bullying type” attitude. Mr. Adams was troubled by this teacher’s treatment of his students and related his concern to his supervisors, but nothing was done about it, and Mr. Adams was frustrated with this inaction. (Adams direct testimony; Exh. 2: Physician’s statement of Dr. Marc A. Whaley in support of Mr. Adams’s accidental disability retirement application; attached report of Dr. Whaley dated Mar. 25, 2009 regarding his independent psychiatric evaluation of Mr. Adams on March 13, 2009, at 4.)

8. Shortly after he obtained his teaching certificate and became a full-time automotive instructor at Greater New Bedford Vocational Technical High School in 1997, Mr. Adams came to know J.E., a student at the school who was in Mr. Adams’s automotive shop class. The school administration advised Mr. Adams that J.E. was not a good student and that he was a “troublemaker,” “a handful,” or words to this effect. Another teacher at the school told Mr. Adams that J.E. was “a problem,” which Mr. Adams did not want to hear because, in his view, the fact that a student had trouble did not mean that the trouble was the student’s fault. Mr. Adams felt this way because of the abusive household he and his brother lived in after their mother died, and because J.E. reminded him of his brother. When the student came to the class for the first time, Mr. Adams

introduced himself and spoke to him about his academic and personal problems. He told the student that “we were going to pull him along,” and that if he needed help he should ask, but that misbehavior would not be tolerated. When J.E. attempted to relate personal problems, however, Mr. Adams stopped him because as a teacher he would have to report this information, and suggested instead that the student go to the school’s guidance department. Mr. Adams maintained this position afterward, whenever J.E. attempted to relate details of personal issues to him. (Adams direct testimony; Adams testimony in response to administrative magistrate’s questions; Exh. 2: Dr. Whaley’s report dated Mar. 25, 2009, at 4.)

9. J.E. was Mr. Adams’s student for his first three years at the school. The courses Mr. Adams taught, and that J.E. likely took with him, focused upon automotive industry tools, vehicle systems (for example, engine, electrical, cooling, and braking systems), and automotive-related math. Grading was in numbers to 100, with 65 being a passing grade. J.E.’s grades were in the 70s. (Adams direct testimony; Adams testimony in response to administrative magistrate’s questions.)

10. J.E. was not Mr. Adams’s student during the 2000-01 academic year, his senior year. As was true of many other seniors at Greater New Bedford Vocational Technical High School, J.E.’s senior year was a mix of academic subjects and work outside the school. He worked during that year at a large marine engine and generator repair shop, a job for which Mr. Adams had not recommended him and with which he was not involved. However, Mr. Adams continued to speak with J.E. about academic and personal problems, although he continued to limit personal problem-related discussions (*see* Finding 8), and advised the student to speak with the school’s guidance department and/or call various numbers to reach confidential help. (Adams direct testimony; Adams

testimony in response to administrative magistrate's questions.)²

c. Student suicide (March 6, 2001), effects upon Mr. Adams, and treatment and counseling, through his last day of work (February 6, 2008)

11. Mr. Adams last saw J.E. on March 6, 2001. He appeared at the school on that date, during regular class hours; Mr. Adams recalled the student as being upset and wanting to speak with him. Mr. Adams was busy at the time with a group of students and told J.E. to wait until he had a moment to speak with him, but when he had finished with the student group and went to look for J.E., he could not find him. (Adams direct testimony.)

12. When Mr. Adams arrived at school the next morning (March 7, 2001), he learned that J.E. had committed suicide. Mr. Adams was shocked and had difficulty coming to terms with this news. He was upset that he had not had an opportunity to speak with J.E. the day before, and felt guilty that he had not helped him. Mr. Adams had difficulty consoling the other students or explaining what had happened. (Adams direct testimony.)

13. Mr. Adams continued to teach following J.E.'s suicide but was easily distracted and

²/ Mr. Adams's prehearing memorandum relates that J.E. "confided in" him "both as to work and personal struggles," that "Adams counseled him regularly and they developed a bond" (Adams prehearing mem. at 2, statement of relevant fact 21), and that during his senior year, Adams and the student "would visit regularly and Adams would provide academic help," and that "Adams also advised J.E. to seek assistance with the school counseling program regarding issues involving his home life" (*id.*, statement of relevant fact 23). Mr. Adams's testimony lacked this detail about regular visits and bonding, however. During his direct testimony, Mr. Adams declined to say more than that he spoke with J.E. during the student's senior year on the ground that the personal information the student furnished was confidential, and that he had ended conversations with J.E. that had verged into home life-related matters because, as a teacher, he was a mandatory reporter and would have had to report the details that the student wanted to relate to him. The record suggests that some of those details concerned the student's mother and her boyfriends. *See* Finding 26 below.

had difficulty concentrating. He began to experience anxiety symptoms and headaches at work as the spring 2001 semester ended, but the student's suicide "popped into" his mind and he found himself having "no idea what was going on." These thoughts and feelings persisted during the semesters that followed. (*Id.*)

14. Being away from the school during the summer of 2001 helped Mr. Adams somewhat, even though J.E.'s suicide still "popped into" his mind. Returning to the school to teach that fall was difficult. He found himself "tensing up and feeling anxious," but he "didn't know what was wrong," and his thoughts made no sense to him. It became increasingly difficult for Mr. Adams to perform his duties as a teacher, and he was absent from work frequently. He became increasingly anxious about letting down his students, because he believed he had let J.E. down. He became "stand-offish" with students, and was "afraid to hear anything they were involved in," although he "could still teach the material" for the courses he taught. On the few occasions when he acted on a student's behalf by approaching the school administration about a problem the student was having, Mr. Adams felt that his efforts "fell on deaf ears" and that he had let the student down. (*Id.*)

15. Mr. Adams took six days of paid sick leave during the 2001-02 school year. (Adams cross-examination.)

16. By 2002, Mr. Adams was anxious, had difficulty sleeping, and was having "crazy dreams," and was "looking for something to stop that." He began drinking, first occasionally and then frequently. By late 2004 or early 2005, he had "pushed away" a person with whom he was having a relationship, and he was abusing opiates as well as alcohol. He felt as if he was "becoming unglued." As had been the case when he returned to the school to teach after the summer of 2001,

Mr. Adams felt, when he returned to teach in subsequent Septembers, that simply walking into the building was giving him “this anxious feeling.” (*Id.*)

17. Between September 1, 2004 and June 30, 2005, Mr. Adams took 46 days of paid sick leave. (Exh. 1: Accidental disability retirement applic., dated Apr. 25, 2008, at 15.)

18. During the spring 2005 semester, Mr. Adams's supervisor at the school suggested that he seek counseling through the Outlook Employee Assistance Program (EAP). Mr. Adams did so, and had an initial meeting with Jason Niremberg, one of EAP's licensed social workers, on May 20, 2005. Mr. Niremberg referred him immediately to Gosnold Treatment Center in Falmouth, Massachusetts on account of his use of Oxycontin and excessive alcohol consumption. (Exh. 8.)

19. Mr. Adams was first admitted to Gosnold Treatment Center on May 21, 2005, where he reported “feeling miserable” and related that he had been consuming alcohol (a pint of whiskey and 10-20 beers daily) and taking Oxycontin (40-60 mg) daily for three years, which was recorded in the Center's notes as indicating dependence upon these substances, and Valium when he needed it to sleep, and that he had snorted heroin (2-3 bags) for the first time on the previous day (May 20, 2005). He was given Librium (to treat anxiety related to alcohol withdrawal) and placed on a Suboxone protocol (to treat opiate addiction) and, with treatment completed, he was discharged from Gosnold on May 26, 2005. Gosnold referred him back to Mr. Niremberg for counseling relative to his depression, and its records noted that Ms. Adams had an Alcoholics Anonymous (AA) group and sponsor, and that he would be attending AA meetings 5-7 times per week. (Exh. 15.)

20. Mr. Adams continued his counseling sessions with Mr. Niremberg. On May 20, 2005, he told Mr. Niremberg that he had been unable to go to work and reported what the social

worker described as “severe obsessive thinking about a student who had committed suicide” Mr. Adams also told Mr. Niremburg he was “using Oxycontin and high amounts of alcohol 16 beers and pint daily,” and that he had experienced ten years of pain due to an auto accident, without good results from “many pain killers.” Mr. Niremburg observed that Mr. Adams was “shaking and appearing to have some withdrawal symptoms, and was “asking to go away and deal with the current symptoms,” although he had “[n]o suicidal thinking” at the time. Mr. Adams told the counselor that he had no current physician (*id.*), although the counselor’s notes do not state whether he asked Mr. Adams which professional (if any) had prescribed him a narcotic pain reliever. (Exh. 8 at 3.)

21. Linda Gurney, a Licensed Social Worker, first saw Mr. Adams on September 6, 2005. He had been referred to her by Mr. Niremburg through the Outlook Employee Assistance Program. Ms. Gurney’s notes for that visit relate a history of alcohol and drug abuse and absenteeism at work “due to anxiety and substance abuse,” and state that Mr. Adams “has had problems with alcohol and pain meds.” Mr. Adams had presented with “anxious mood,” being unable to concentrate,” and sleep problems. He told Ms. Gurney that his “head won’t stop with thoughts from past,” and that he had gone to Massachusetts General Hospital due to a “med reaction” that had caused him headaches and shaking that “mimicked withdrawal symptoms,” but that “others didn’t believe him.”³ Mr. Adams also told her that he wanted to “deal with” a “student who committed suicide” but had

³/ Medical records for Mr. Adams’s admission to Massachusetts General Hospital on June 13, 2005 show that he presented with multiple complaints including headache, general weakness, lightheadedness, confusion, and difficulty focusing, and having felt ill since being treated with antibiotics for a dental abscess on May 29, 2005. He was kept overnight and discharged on June 14, 2005 in stable condition, with a diagnosis of pre-syncope, sinus congestion, dry eyes and tinnitus, and was directed to stay well hydrated and follow up with a primary care physician. (Exh. 10.)

difficulty discussing it and could not “get thoughts out of his mind.” He reported having panic attacks which seemed to be worsening, and felt that Mr. Niremborg did not believe him. He “blame[d] everything on drugs and alcohol but state[d] he feels pressure in the back of his head.” Mr. Adams agreed to return to see Ms. Gurney in a week, but Ms. Gurney’s notes relate that he did not appear for his September 15, 2005 appointment and did not call her back despite the messages she had left on his phone. (Exh. 9 at 1-2: counseling notes of Linda Gurney, 9/6/05.)

22. Mr. Adams’s drug and alcohol use resumed, and he was again admitted to Gosnold on January 1, 2006. The admission evaluation record noted daily heroin snorting and Oxycontin use, as well as daily consumption of 12-15 beers and a pint of whiskey over the preceding eight months. Gosnold initiated a Suboxone regimen, together with medication to relieve the physical symptoms of opiate withdrawal and accompanying anxiety, and Mr. Adams also attended group counseling. He was discharged from Gosnold on January 6, 2006, with instructions to continue attending Alcoholics Anonymous meetings and meeting with Mr. Niremborg. (Exh. 15.)

23. Mr. Niremborg’s notes dated January 9, 2006, following Mr. Adams’s second admission to Gosnold Treatment Center, relate that Mr. Adams had relapsed into substance abuse following his use of “meds” to relieve “chronic back pain,” and that he had been “drinking fifths [of liquor] and beers daily.” His notes also state that Mr. Adams had left Gosnold “sober and off drugs” after being there a week. Mr. Niremborg’s assessment was that Mr. Adams appeared to be in moderate pain and unable to focus on issues, and that although he “denied thoughts of harm,” he “admit[ted] to very low mood and feeling like life is not worth living,” although Mr. Niremborg also wrote “[n]o thought disorder.” (Exh. 8 at 6.)

24. Between October 13, 2005 and May 1, 2006, Mr. Adams took 70 days of paid sick leave, and between September 11, 2006 and January 30, 2007, he took 31 days of paid sick leave. He also took 83 days of unpaid sick leave between January 31, 2007 and June 12, 2007. (Exh. 1: Accidental Disability Retirement Application dated Apr. 25, 2008, at 15; Exh. 24: Attendance records for Mr. Adams for the period May 2000 through June 2008.)

25. On January 10, 2007, Mr. Adams told Mr. Nirenberg that he was “bothered by repeated intrusive thoughts regarding a student that committed suicide” and that he could not get this out of his mind, was sleeping poorly and at times could not get out of bed,” and that he had missed work since December 16, 2006. Mr. Nirenberg also noted Mr. Adams’s “long history of SA [substance abuse] issues and depression,” and that he had stopped counseling with Ms. Gurney a year earlier. He also noted that while Mr. Adams denied drinking, he had been using alcohol twice weekly or more, and had also been taking four percocets daily for back pain. He assessed Mr. Adams as “[a]ngry despondent over his situation,” and noted that he was “[r]ejecting possible options to manage his problems.” (Exh. 8 at 8.)

26. On January 22, 2007, Mr. Adams saw Ms. Gurney again, for the first time since his initial visit in September 2005. He appeared to be distraught and tearful, and reported “ruminating thoughts” and worries about his job. He related that he had not worked since Christmas 2006, and that he had nearly used up his sick time, but he felt he could not guarantee that he would not “break down in school” if he returned to work. Mr. Adams again told Ms. Gurney that his current bout with depression “started when a student of his committed suicide back in 2002” [sic] after “approaching him several times during the course of year complaining about his mother and her boyfriends,” and

that although he had advised the student to speak to a counselor, the student insisted that “they didn’t listen to him.” Mr. Adams also related how the student had come to speak with him but he had asked the student to wait in the teacher’s room while he completed a task, and that he would return shortly, but the student left, and it was later learned that he had committed suicide that evening. Ms. Gurney’s notes relate that Mr. Adams was “second guessing himself,” and was wondering whether he could have prevented the suicide from happening. He reported that students had continued to come to him to complain about their problems or other “felt injustices,” and that their emotional problems made it difficult for him to “deal.” Mr. Adams told Ms. Gurney that he was “especially annoyed by another teacher that he feels is condescending to students” and had complained about the teacher to the school administration, only to be told by the administration that if he wanted to keep his job he should “shut up” about the matter. He felt angry toward a school administration that would not listen about “teachers who are rude to kids and just don’t care.” Mr. Adams expressed frustration to Ms. Gurney and told her that “fear of repeat suicide” was “wreaking havoc with his mind,” and that he did not know what to do. He spoke of having panic attacks and not knowing when they would occur, and was avoiding people, including friends. He was using prescription drugs and alcohol “to try to shut off his head,” but denied having a “major” problem with those substances. (Exh. 9 at 3-5.)

27. Dr. Rasim Arikan performed a psychiatric evaluation of Mr. Adams on February 5, 2007. He noted Mr. Adams’s history of using opiates, including Percocet, to relieve pain due to a

prior back injury, and alcohol use including consumption one week earlier of “2-15 beers.”⁴ Dr. Arikan also noted a “traumatic history” (the student suicide), and Mr. Adams’s complaints of flashbacks, anxiety and depression, blaming himself (for the suicide), not enjoying life, and sleep and an appetite that were “not good.” Mr. Adams presented with a sad and anxious affect, but did not appear to be suicidal or delusional. Dr. Arikan diagnosed PTSD and depression as well as alcohol and opioid abuse, and prescribed an antidepressant used to treat PTSD (Paxil) and medication used to treat depression and related anxiety disorders (Ativan). (Exh. 12.)

28. During a home visit she paid to Mr. Adams on February 6, 2007, Ms. Gurney learned that a friend of Mr. Adams was letting him use an upstairs apartment, and that he felt “slightly more relaxed now that housing is in place and he knows he’s getting help,” although she added “[a]gain raised issue of [illegible] drug use as being negative pressure at vulnerable time.” (Exh. 9 at 6.)⁵

29. On February 7, 2007, Mr. Nirenberg sent Mr. Adams’s supervisor at the school, Mr. Frey, a letter advising that he had referred the teacher for ongoing psychotherapy and a medication evaluation, that Mr. Adams was unable to perform his teaching duties, and it was unclear when he would be ready to do so, and that he would “continue to case manage Mark Adams[‘s] leave of

⁴/ The “2” in the number of beers Dr. Arikan reported Mr. Adams as having consumed was likely a typo and was probably meant to be “12,” in view of the alcohol consumption he reported during his January 2006 Gosnold admission. *See* Finding 22 above.

⁵/ The illegible word in Ms. Gurney’s February 6, 2007 notes, which were handwritten (as were all of Ms. Gurney’s records), might be “friend” or “friends.” Ms. Gurney could not clarify what she wrote because she did not testify. The context is clear nonetheless. Her notes for Mr. Adams’s March 16, 2007 visit mention daily drug use where he was living and his need to get away from it (*see* Finding 31), which underscores that Mr. Adams was living in an environment that was conducive to, and was exacerbating, his drug abuse.

absence and return to work issues.” (Exh. 8 at 9.)

30. Ms. Gurney spoke with Mr. Frey on February 7, 2007 regarding Mr. Adams’s inability to work and the “incident” involving the student. Ms. Gurney validated the serious nature of Mr. Adams’s inability to concentrate. Mr. Frey told her that Mr. Adams had never mentioned that he was upset specifically by the incident in question. He also told Ms. Gurney that he would look into Mr. Adams’s sick leave situation. (Exh. 9 at 6.)

31. On March 16, 2007, Mr. Adams reported to Ms. Gurney that his friend’s fiancé was pressuring him to pay rent, and that “drug usage in home is daily,” and he knew he needed to “get out ASAP or [lose] gains he’s made.” He also continued to experience panic attacks but that they occurred slightly less frequently than they had before. Ms. Gurney told him that there was a possible opening for someone to stay with an incapacitated elderly person who needed assistance. (Exh. 9 at 8.)

32. Mr. Adams was admitted to Gosnold for the third time on April 10, 2007, following eight months of heroin snorting and heavy alcohol consumption. He reported that his life had become unmanageable due to his substance abuse. The Gosnold counselor’s April 11, 2007 notes relate Mr. Adams’s statement that he and his wife had divorced as a result of their abuse of drugs and their drinking. He also told the counselor that his drug abuse and drinking had caused him to use up his sick leave from the school and that he was no longer being paid. The counselor’s notes also mention the death of Mr. Adams’s student, and that Mr. Adams continued to feel responsible for the student’s death because the student had asked to speak with him but he was too busy to do so and they never again had contact. Mr. Adams told the counselor that his substance abuse and

drinking had “increased tremendously” beginning on the day he learned of the student’s suicide. Once again, Gosnold initiated an alcohol withdrawal regimen and a Suboxone administration protocol to address opioid abuse. Mr. Adams was discharged on April 17, 2007, with instructions to continue with AA meetings and counseling. In view of Mr. Adams’s statement to his counselor that he wished he could stay with a relative because he lived alone and his neighbors used drugs, he was also instructed to stay elsewhere until he was “stronger.” (Exh. 15.)

33. On April 23, 2007, Ms. Gurney introduced Mr. Adams to the elderly woman who needed household chores in exchange for free board, and by the end of the month he had moved in, was performing “some chores” around the apartment, and had met the landlord, who was a retired Greater New Bedford Vocational Technical High School teacher. By early May 2007, however, Mr. Adams was complaining to Ms. Gurney that he did not like how the elderly woman spoke to others, and told her that he was keeping more to himself and looking into whether he could move into his grandmother’s old house in Plymouth, Massachusetts, which was co-owned by his brother and his step-sister, but that he did not like being dependent on others. (Exh. 9 at 9-10.)

34. Mr. Adams took unpaid sick leave for almost all of early 2007 (January-April). On May 8, 2007, Dr. Arian wrote a “to whom it may concern” letter, at Mr. Adams’s request, stating that Mr. Adams could “resume working with continuing care with his providers.” However, for the period April 2, 2007 through June 12, 2007, Mr. Adams took 45 days of unpaid sick leave. (Exh. 12: Dr. Arian’s records, at 37; Exh. 24: Mr. Adams’ attendance records.)

35. Mr. Adams returned to work at the school in September 2007. He took no sick leave through December 2, 2007. Between December 3, 2007 and February 8, 2008, Mr. Adams took 6

days of paid sick leave. (Exh. 24.)

36. Mr. Adams last taught at Greater New Bedford Vocational Technical High School on February 6, 2008, and did not return to work subsequently. (Exhs. 5 and 6.) By that date, he had decided not to return to work because his “head wasn’t in the right place.” (Adams cross-examination.)

37. Mr. Adams took ten days of paid sick leave (all the paid sick leave he had remaining) between February 8, 2008 and February 28, 2008. He took unpaid leave between February 29, 2008 and May 23, 2008. (Exh. 24.)

d. Events through Mr. Adams’s dismissal (May 29, 2008)

38. Mr. Adams returned to see Ms. Gurney on February 14, 2008, after a hiatus of several months. He reported that he was again having problems with anxiety, headaches, inability to concentrate, and frequent panic attacks, that he was unable to handle the demands of his teaching job and felt as if his head was “going to explode,” and that his thoughts wandered back to the student’s suicide in 2001. He again complained of not being able to deal with students’ problems, including a complaint by a female student that another teacher was putting his hands on her. He told Ms. Gurney he was back to using antidepressants and heroin because he could not afford Oxycontin. Ms. Gurney told him he needed to see Dr. Arian again, and attempted to set up an appointment. (Exh. 9 at 14.)

39. Mr. Adams was admitted to Gosnold for the fourth time on February 20, 2008, following daily heroin snorting and excessive alcohol consumption over the preceding eight months.

Again, Gosnold initiated an alcohol withdrawal protocol and a Suboxone protocol to treat opioid abuse. A Gosnold counselor discussed “sober housing” with Mr. Adams as a living alternative, although it is not clear from the notes whether he was given instructions about locating such housing or applying for it. Ultimately, he was discharged “home” (meaning, apparently, his friend’s apartment) on February 27, 2008 following the completion of his drug and alcohol dependency treatment. The discharge summary noted that Mr. Adams needed to address his living situation and his “history of isolation.” (Exh. 15.)

40. Mr. Adams saw Mr. Niremburg again on March 12, 2008, the last such visit documented in the record. Mr. Niremburg’s notes for this visit relate that Adams had been to Gosnold Treatment Center a month earlier but had not returned despite being referred to Gosnold’s outpatient clinic, and that he had an appointment with Dr. Arakan on March 13, 2008 regarding “Meds.” Mr. Adams told Mr. Niremburg that he “became depressed during the year, started drinking and using prescription drugs,” and “began taking [heroin] and alcohol and found he needed to go into the hospital.” At “history of problem,” Mr. Niremburg wrote “[l]ong standing problem with depression, PTSD and drug alcohol addiction. Over the past 2 years he has had several extended leave of absences.” His clinical assessment was “Oriented X3,” meaning that he found Mr. Adams to be mentally alert and oriented to person, place and time; he also noted “moderate agitation” and that Mr. Adams “blames his problems on the past trauma in his life and feels he needs to get rid of those thoughts to gain control. No thought disorder.” (Exh. 8 at 11.)

41. On April 3, 2008, Dr. Arakan wrote a “to whom it may concern” letter stating that Mr. Adams “remains unable to work due to his medical condition.” That letter followed a visit on March

13, 2008 during which Mr. Adams reported feeling distressed, depressed, anxious, feeling that he was “back to square one,” reminiscing about the student who had committed suicide. In view of Mr. Adams’s continuing PTSD and major depression, Dr. Arian prescribed continued daily use of Paxil and Ativan, to which he added an antidepressant used to treat major depression (Wellbutin) and medication used to treat panic disorder (Klonopin). (Exh. 12: Dr. Arian’s records, at 35.)

42. On May 5, 2008, the Superintendent-Director of the Greater New Bedford Regional Vocational Technical High School sent Mr. Adams a notice of intent to dismiss him as a teacher. The ground for dismissal recited by the notice was Mr. Adams’s incapacity “based upon . . . excessive absenteeism and continuing failure to perform the essential functions of [his] job as a teacher.” The notice stated that Mr. Adams had worked only 68 days during the 2006-07 school year, and only 98 days during the 2007-08 school year, and that he had been absent from work since February 7, 2008.⁶ (Exh. 5.)

43. On May 29, 2008, the Superintendent-Director notified Mr. Adams by letter that he was dismissed as a teacher, for the same reasons the notice of intent to dismiss him had recited. (Exh 6.)

⁶/ Mr. Adams testified that he never received the notice, but he did not dispute his extensive absenteeism. In his accidental disability retirement application, he stated that he had taken 69 days of unpaid sick leave between February 29, 2008 and June 13, 2008. (Exh. 1: Accidental disability retirement applic. at 15.)

e. *Accidental disability retirement application (July 6, 2008)*

44. Mr. Adams filed an application for both ordinary and accidental disability retirement with MTRS on July 6, 2008. In it, he described his disability as “Post Traumatic Stress Disorder-Depression-Anxiety” that had left him completely unable to perform his job duties as a teacher. (Exh. 1: Disability Retirement Application dated July 8, 2008 at 5.) Mr. Adams described the personal injury he sustained or the hazard exposure undergone as follows:

3/7/01 - student took own life - I worked closely w/student for 4 yrs, regarding school and personal troubles this had a traumatic effect on my mental health. After that, ongoing work closely with students worsened my condition until I could no longer work in a school setting.

Mr. Adams gave the “[s]pecific time(s) or if hazard/exposure, length of time exposed” as “3/7/01 initial event ongoing exposure until 2/08.” He described the “incident(s) or hazard exposure” as follows:

The suicide of a student with whom I worked closely and counseled. Thereafter each encounter with my students seemed to heighten my anxiety.

(*Id.* at 9.)

45. Mr. Adams stated in his accidental disability retirement application that he had not filed a report of the incident or hazard/exposure he described with any person or agency, and added “I tried to file at work but advised I couldn’t.” (Exh. 1 at 10.)⁷

⁷/ When he made this attempt to file an incident report, and who advised him he could not do so, were not explored during Mr. Adams’ direct testimony or cross-examination. The attempt to file an incident report is not supported by the record, and the record also shows no attempt by Mr. Adams to speak with the school administration about the suicide’s effect on him or on his performance as a teacher. As noted above, Ms. Gurney learned during her February 7, 2007 conversation with Mr. Adams’s

46. Mr. Adams also stated in his accidental disability retirement application that he had applied for workers' compensation benefits on September 8, 2008, and that he had not received, and was not receiving, weekly workers' compensation benefits or a benefits amount pursuant to a settlement. (*Id.* at 6.)⁸

47. Psychiatrist Dr. Mark A. Whaley completed the physician's statement supporting Mr. Adams's accidental disability retirement application. It included a report he prepared regarding his examination of Mr. Adams on March 13, 2009, which related a diagnosis of "a rather severe form" of PTSD "manifested by substantial anxiety, re-experiencing, hypervigilance and avoidance behaviors." It was Dr. Whaley's opinion that although Mr. Adams had developed appropriate coping mechanisms in response to his childhood abuse, and was able to function responsibly in management and leadership retail positions and then as a successful vocational teacher, he was troubled by the bullying behavior of another vocational teacher that was reported to him by his students and the students' emotional trauma. He opined further that the 2001 student suicide "overwhelmed" his defenses, triggered his PTSD, and was "further complicated by repeated interactions with students in which he felt he could not live up to the expectations of protecting them and dealing with their

supervisor at the school, Mr. Frey, that Mr. Adams had never mentioned to him that he was upset specifically by the student's suicide. (*See* Finding 30.)

⁸/ Neither party disputed September 8, 2008 as the date on which Mr. Adams applied for workers' compensation benefits. There is no assertion or evidence of a prior workers' compensation benefits claim by Mr. Adams. Neither party clarified the outcome of his application for workers' compensation benefits, but that clarification would not affect the outcome here. What matters is that the record shows no workers' compensation benefits claim by Mr. Adams prior to his accidental disability retirement application and, thus, no workers' compensation-related exception from the two-year notice requirement of M.G.L. c. 32, § 7(1) M.G.L. c. 32, § 7(1).

emotions, as he was called upon to do.” (Exh. 2: Physician’s statement pertaining to Mr. Adams’s accidental disability retirement applic. at 6; attached Whaley Report dated Mar. 25, 2009, at 4).

48. Dr. Whaley described the “unremitting stress and insomnia” Mr. Adams experienced, and the “substantial concentration problems and memory difficulties” that developed, as “symptoms which are typically found in an individual suffering from ongoing Post Traumatic Stress Disorder.” (*Id.*) Dr. Whaley stated in his report that “[h]is accumulative emotional trauma led to his becoming completely disabled as a teacher beginning in February, 2008.” (*Id.*) It was his opinion that:

[T]his man’s current disability, which persists to the present time, is likely to continue on into the indefinite future, was predominantly caused by the suicide of his student in 2001 and then his unsuccessful attempt to deal with the emotions involved and teach the students as he was trying to cope with his trauma. Were it not for this suicide, there is no reason to suspect that Mr. Adams, while having been abused as a child, would have developed such a full-blown syndrome of Post Traumatic Stress Disorder and that is the reason for assigning this event as a predominant cause of his current disability.

(Exh. 2: Dr. Whaley’s report dated Mar. 25, 2009, at 5.) Dr. Whaley concluded that Mr. Adams was totally disabled to the point that he was not capable of engaging in work as a teacher, either at the school where he had been teaching or in any other educational system, or in any kind of competitive employment or other work activities “due to the overwhelming nature of his anxiety symptoms, poor concentration and memory difficulties.” (*Id.*) He also opined that psychiatric treatment should continue, that it could result in improvement, and that Mr. Adams “may sometime in the future be capable of some kind of gainful employment, but the time frame of that favorable result would likely be several years into the future.”

49. As of September 3, 2009 (the date of the latest of his notes in the record), Mr. Adams,

who had not worked at the school since early 2008, was reporting to Dr. Arikan that he experienced anxiety if he had to pass by the school, and his symptoms, mental status and diagnosis remained essentially as it had been since early 2007, except that Mr. Adams's major depression was now described as "Major Depressive Disorder, Recurrent, Severe." Dr. Arikan directed Mr. Adams to return in one month, or earlier if needed. (Exh. 12.)

f. Medical panel

50. In early 2011, at MTRS's request, the Public Employee Retirement System Administration Commission (PERAC) convened a regional medical panel comprising three psychiatrists, Dr. Helenita Hamer, Dr. Ofra Sarid-Segal, and Dr. Tracy K. Mullare, to examine Mr. Adams and determine whether he was disabled, whether the disability was likely to be permanent, and whether the disability "was such as might be the natural and proximate result of the personal injury sustained or hazard on account of which retirement is claimed." After being furnished by MTRS with Mr. Adams's accidental disability retirement application, including a description of his duties as an automotive teacher at the School, and his medical records, the panel members examined Mr. Adams separately in early 2011 and each issued a certificate of conclusions and a supporting report.

i. Medical panel member Dr. Hamer's review and opinion

51. Dr. Hamer reviewed Mr. Adams's medical records and job description prior to examining him on January 14, 2011. (Exh. 16: Hamer report at 1, 3.) Her report relates that Mr.

Adams appeared to connect what he referred to as his “situation”—by which he meant his inability to teach any longer, his inability to slow his mind, his feeling of having “lost his wheels,” and his inability to drive by the school—to the 2001 suicide of one of the students he knew. (*Id.* at 1-2.) Mr. Adams informed her that following the suicide, he became “fearful of going to school because of questions that students would ask him,” developed frequent headaches and “some time between 2003 and 2004, became suicidal,” but continued to be actively employed for several years. (*Id.* at 1.) Dr. Hamer noted that Mr. Adams related five years of psychotherapy, with diagnoses of PTSD, depression, opiate abuse and alcohol abuse, and that his current medications (Abilify (an antipsychotic medication), 15 mg. daily; Alprazolam (used to treat anxiety disorders), 1 mg daily; Paroxetine (used to treat depression and anxiety disorders), 60 mg daily; and Hydroxyzine (a sleep aid) 200 mg daily) provided only limited benefit. (*Id.* at 2.) She also noted a history of heavy drinking, and opioid abuse including but not limited to heroin, oxycontin and Percocet with an unknown onset date, active drug use in November 2009 and absenteeism related to drug use in 2007, and multiple drug detoxes at Gosnold, in 2005, 2006, 2007 and 2008. Dr. Hamer also noted that Mr. Adams and his former spouse had abused drugs and alcohol during their 20 years of marriage. (*Id.*) Dr. Hamer observed that Mr. Adams was “somewhat tremulous,” and “made poor eye contact, and periodically looks down,” was “not forthcoming with answers” to questions and was “evasive and repetitious.” She found him to be “essentially coherent but seem[ed] easily overwhelmed,” with mildly-disorganized thinking, and noted that he “[did] not appear fully able to concentrate or provide a logical and chronological report,” although there was no evidence of thought disorder, and Mr. Adams denied suicidal ideation, paranoia or hallucinations. (*Id.*)

52. It was Dr. Hamer's opinion that Mr. Adams was mentally unable to perform his teaching duties, but she questioned whether this inability to function was PTSD-related rather than related to another ongoing process or to a different etiology, such as bipolar disorder or dementia brought on by years of alcohol and drug abuse prior to the student's suicide. Dr. Hamer acknowledged that other clinicians who had previously evaluated or treated Mr. Adams had diagnosed PTSD, but it was not clear to her that his inability to function was primarily related to PTSD, or that his "presumed PTSD, or aggravated PTSD, resulted from a job hazard." Dr. Hamer explained that Mr. Adams had, in fact, worked for a number of years following the student's suicide, and that "the remote and probably most important cause of his presumed PTSD, as it is understood, seems related to his childhood experiences of possible neglect and abuse." (*Id.* at 3.)

53. Dr. Hamer did not view the job performance-impairing problems Mr. Adams described as having their origin in PTSD, and she perceived a distinct possibility of another process manifesting itself—bipolar disorder or dementia—that originated before the student's suicide. She noted that Mr. Adams had "consistently reported inability to think, concentrate as well as, on one hand, slowing of his thinking and, on the other hand, racing thoughts," with high levels of anxiety, and that it was "almost as if his racing thoughts prevent him from effectively reasoning and responding in situations which is consistent with the information received relative to [his] inability to do his job." (*Id.*) Noting that impaired cognitive function was "probably the main reason why [Mr. Adams] cannot perform the duties of his teaching job," Dr. Hamer went on to relate her impression that:

In the absence of active substance abuse, such as intoxication or withdrawal states,

his complaints suggest, among other things, that the claimant may, from time to time, be experiencing possible symptoms and signs of a bipolar disorder and/or dementing disorder.

The facts surrounding the death of the student are not known to this writer. Although the signs of posttraumatic stress disorder would have been possible at some point in time, as in the claimant's childhood and beyond, and following the death of the student, the claimant continued to work for a number of years after the student's suicide. The member's problems with substance abuse may have been more closely related to his absenteeism and inability to hold the job.

(Exh. 16: Hamer report at 3: "Summary of Assessment and Conclusion").

54. Dr. Hamer therefore opined that although Mr Adams was mentally incapable of performing the essential duties of his teaching job, and the incapacity was "of undetermined duration and likely to be permanent . . . it cannot be said . . . that said incapacity is the result of a personal injury or hazard undergone taking place while in the performance of his job duties. (*Id.*)

55. Mr. Adams's counsel requested, subsequently, that Dr. Hamer clarify her negative opinion as to work-related causation by answering (1) whether Mr. Adams "carries the diagnosis of post traumatic stress disorder;" (2) if not, what was "the nature of his diagnosis"; and (3) whatever his psychiatric diagnosis was, "whether or not that condition is a result of a personal injury or hazard undergone taking place while in the performance of his job duties while employed as a teacher for the Greater New Bedford Vocational Technical School." (Exh. 19a.) Dr. Hamer answered these questions on August 1, 2012. She stated that in evaluating Mr. Adams, she was "not able to elicit information regarding symptoms and signs to give him a definitive diagnosis of Posttraumatic Stress Disorder," and she believed his condition "can best be described as Depression, not Otherwise Specified and cannot be linked to his job performance with any degree of certainty." Dr. Hamer also

stated that “[t]he impact of the student’s suicide on the claimant is not well understood.” (Exh. 19c.)

ii. Medical panel member Dr. Sarid-Segal’s review and opinion

56. Dr. Sarid-Segal reviewed Mr. Adams’s medical records and job description, and examined him on January 15, 2011. (Exh. 17: Sarid-Segal report at 1, 3.) Her report relates that Mr. Adams appeared to be in no apparent distress, was alert and oriented, and attended to the interview, but was frequently defensive and gave a description of his symptoms and substance abuse that Dr. Sarid-Segal found unreliable. (*Id.* at 4.) He was tearful and cried openly when speaking about the student’s suicide. There was no evidence of delusional thinking, and Mr. Adams denied any perceptual disorder. (*Id.*) Mr. Adams described the student’s suicide and the shock he experienced upon learning of it, but he added several details. He told Dr. Sarid-Segal that he recommended to the student that he see the school guidance counselor, but the student refused; in addition, the student did not call any of the numbers for outside treatment that Mr. Adams gave him. Mr. Adams believed the student had learning problems that led to behavioral problems, and that as a result of the educational assistance he had provided, the student’s performance in school had improved significantly. Mr. Adams learned of the student’s suicide while he was in his classroom. A school “crisis team” came to advise him and the other students in his class, although Dr. Sarid-Segal did not state what advice the crisis team provided, if any, or whether it simply came to report the news and then left. (*Id.*)

57. Mr. Adams told Dr. Sarid-Segal that he thought frequently about the guilt he felt for not attending to the student the day before the suicide and not being available to other students for

support. He reported “racing thoughts” and high anxiety interfering with his sleep, and confirmed that his sleep problems coincided with his drinking. He described his memory and concentration as poor—he could follow a conversation but found it difficult to read. Mr. Adams stated that he tried to avoid the school and had panic attacks when he drove by it. He described breaking down when he thought about the student’s suicide, and also experiencing frequent depression, hopelessness and sadness, and poor appetite. He denied being currently suicidal, but stated that he had suicidal thoughts in 2008 and had planned on asphyxiating himself by carbon monoxide poisoning in his car, but ended up making no attempt to commit suicide. Dr. Sarid-Segal described Mr. Adams’s description of substance use and problems related to it as “vague,” described his responses to questions about it as “defensive,” and asserted that Mr. Adams gave him a different description of his alcohol use than he gave during his Gosnold detoxification admissions. (Exh. 17: Sarid-Segal report at 3.)

58. Dr. Sarid-Segal’s report adds medical details from her review of the medical records that are not mentioned by Mr. Adams’s treating or examining physicians—falls in 2005, and a facial laceration that was possibly related to alcohol use and to a syncopal episode, as well as primary care notes revealing that although the primary care physician suspected substance abuse, he was not aware of its ongoing extent. (*Id.* at 4.)

59. Dr. Sarid-Segal concluded that Mr. Adams’s history of childhood emotional trauma, and his history of substance abuse beginning in his twenties, were significant, as was his recovery from these two problems with what proved to be a good work history. She viewed Mr. Adams as having become “over involved emotionally with the students” at the school, as illustrated by the

degree of his concern about how the students were being treated by another teacher and his initiation of “multiple complaints” about the other teacher with his supervisor, and also by his relationship with the student who committed suicide. “This over involvement,” Dr. Sarid-Segal stated in her report, “may be related to his childhood trauma and may have been a result of over identification with the students.” (*Id.* at 5.) The student’s suicide was “undoubtedly traumatic to Mr. Adams leading to grief and may have brought on the substance use relapse [he] experienced,” but Dr. Sarid-Segal expressed her “belief that most of the symptoms described by Mr. Adams can be attributed [to] the depression he experiences and to his extensive substance use.” (*Id.*) Therefore, she concluded that while Mr. Adams was physically and mentally incapable of performing the essential duties of his teaching job and was therefore disabled, likely permanently, the incapacity was “not such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed.” (*Id.*)

60. Mr. Adams’s counsel requested, subsequently, that Dr. Sarid-Segal clarify her negative opinion as to work-related causation by answering whether Mr. Adams’s substance abuse relapse was brought about by the student’s suicide, and related to his post traumatic stress disorder, and whether “the incapacity caused by this condition” was “the result of a personal injury or hazard undergone while in the performance of his duties as a teacher for the for the Greater New Bedford Vocational Technical School.” (Exh. 20a.) Dr. Sarid-Segal answered these questions on September 23, 2012. She noted, first, that she did not diagnose Mr. Adams with post traumatic stress disorder because he lacked PTSD’s essential elements, the trauma he experienced was not the type of trauma that potentially induced PTSD and, in addition he did not experience “the symptom constellations

that is diagnostic of PTSD.” Instead, Dr. Sarid-Segal stated, Mr. Adams’s symptoms were “consistent with major depression.” She also stated that it was not possible to answer the question regarding substance abuse relapse being related to the student’s suicide “in a definitive way.” She noted that people who actively used alcohol may respond to stress with increased drinking, and that even persons with a history of alcohol abuse who had developed “adaptive responses” to stress that precluded alcohol use could relapse into drinking under stress. However, Dr. Sarid-Segal stated that she:

could not directly connect in this case the substance abuse relapse to the grief and sadness related to the loss of the student, which is the reason for my opinion of lack of relationship between the precipitating event to the substance abuse relapse. The claimant appears to connect it in his description, but he does not appear credible, as he is defensive and evasive when asked about his drinking relapse. His response in my interview directly contradicted the reports in his multiple detoxification admissions of the amount and frequency of his alcohol use.

(Exh. 20c.)

iii. Medical Panel member Dr. Mullare’s Review and Opinion

61. Dr. Mullare examined Mr. Adams on February 12, 2011 and prepared a report. (Exh. 18.) Mr. Adams appeared depressed and anxious, and described feeling sad, anxious and hopeless. He told Dr. Mullare that he last worked as a vocational teacher in February 2008 because his mind became a “jumbled mess” following the student’s suicide in March 2001. (*Id.*; Mullare report at 2.) Mr. Adams told Dr. Mullare that he often felt “full of emotion” about the student, had noticed himself becoming tense and developing headaches when he entered the school, was afraid of students approaching him with anything other than curriculum-related concerns, and had withdrawn

from others and developed panic attacks, and in addition his memory and concentration had become impaired. (*Id.*) Mr. Adams also stated that he became depressed, experienced suicidal thoughts, could not get out of bed, had difficulty sleeping and developed insomnia, as a result of which he “began” to abuse alcohol and pain medications, which had required detox treatments. (*Id.*) Although Dr. Mullare described the pain medication and alcohol abuse as having been “exacerbated after the student suicide” (*id.* at 3), his report did not mention a prior history of alcohol abuse preceding the student’s suicide. His report also mentioned that Mr. Adams’s began abusing pain medication after his auto accident at the age of 25 (in 1979, in other words). (*Id.*)

62. Dr. Mullare concluded that Mr. Adams suffered from PTSD and major depression; he had “functioned quite highly in both his personal and professional life” before the student’s suicide, which was a traumatic event for him, and his coping skills had been “effective in surviving childhood abuse and neglect, and raising two sons by himself after his wife left them,” and “[t]he decline in Mr. Adams’s functioning is the clear result from the student suicide which he was exposed to during his tenure as teacher.” He described his continued teaching after the suicide as an attempt to work after the traumatic event, but his symptoms worsened. Although he described the treatment Mr. Adams had received for PTSD and depression including therapy and psychiatric medications, as appropriate, he noted that his symptoms had “persisted despite this treatment.” (Exh. 18 at 5.) Dr. Mullare did not question the PTSD diagnosis, or the treatment for PTSD, in view of the persisting symptoms despite treatment. If he considered any alternative cause for “[t]he decline in Mr. Adams’s functioning,” he did not say so in his report. Dr. Mullare concluded that Mr. Adams was mentally unable to perform the essential duties of his teaching job, that the incapacity was

permanent, and that it “might be the natural and proximate result of personal injury sustained or hazard undergone on account for which retirement is claimed.” (*Id.*)

g. MTRS denial of accidental disability retirement application; and Mr. Adams's appeal

63. The panel members agreed, therefore, that Mr. Adams was permanently disabled. However, two of them (Drs. Hamer and Sarid-Segal, a panel majority) issued a negative certificate as to the disability's job-related causation. Based upon this majority negative medical panel certificate as to job-related causation, MTRS denied Mr. Adams's accidental disability retirement application. (Exh. 21.) MTRS approved an ordinary disability retirement for him instead. (Exh. 22.)

64. Mr. Adams timely appealed the Board's denial of his accidental disability retirement application to the Division of Administrative Law Appeals.

Discussion

A member in service of a public retirement system may be retired for accidental disability if he shows that he is unable to perform the essential duties of his job, that this disability is likely to be permanent, and that it was the result of “a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time . . . without serious and willful misconduct on his part.” M.G.L. c. 32, § 7(1). A retirement system member cannot be retired for accidental disability unless he has been examined by a regional medical panel, and at least a majority of the panel members certify that the member is “mentally or physically

incapacitated for further duty” (that is, disabled), that this disability “is likely to be permanent,” and that “the disability is such as might be the natural and proximate result of the accident or hazard undergone on account of which retirement is claimed” M.G.L. c. 32, § 7(1), *referencing* M.G.L. c. 32, § 6(3). As the statutory language makes clear, the disability for which accidental disability retirement is sought may be physical and/or psychological. If a psychological disability is claimed, and is alleged to have been caused by work-related events over a period of years, the claim is evaluated based upon both specific injurious events and general job hazards. *See Fender v. Contributory Ret. Appeal Bd.*, 72 Mass. App. Ct. 755, 894 N.E.2d 295 (2008).

Whether an accidental disability retirement is sought on the basis of a permanently-disabling physical or psychological injury, the applicant must prove one of two hypotheses—either that the claimed disability was caused by a single, specific incident at work, or a series of incidents at work, or that it was caused by his exposure at work to “an identifiable condition that is not common or necessary to all or a great many occupations.” *Adams v. Contributory Retirement Appeal Bd.*, 414 Mass. 360, 365, 609 N.E.2d 62, 65 (1993), *quoting Kelly’s Case*, 394 Mass. 684, 688, 477 N.E.2d 582, 584 (1985) and *Zerofski’s Case*, 385 Mass. 590, 595, 433 N.E.2d 869, 872 (1982); *Blanchette v. Contributory Ret. App. Bd.*, 20 Mass. App. Ct. 479, 485, 481 N.E.2d 216, 220 (1985). The “identifiable condition” hypothesis applies when the employee’s disability is alleged to have been “the product of gradual deterioration,” as opposed to the product of a single work-related event or series of events. *Blanchette*: 20 Mass. App. Ct. at 485, 481 N.E.2d at 220. “Identifiable condition” refers to a condition to which the employee was exposed by the employment in question. *Id.* “[N]ot common or necessary to all or a great many occupations” reflects a policy underlying M.G.L. c. 32,

§ 7(1) that “differentiates between work-related personal injuries for which the Commonwealth should bear responsibility, and other injuries which should more properly be covered by personal health insurance.” *Adams*, 414 Mass. at 366, 609 N.E.2d at 66 (although walking, standing and bending over frequently to assist students in a variety of tasks was unique to the plaintiff’s job as an elementary school teacher and caused her to become permanently disabled, these activities were also “common to necessary human activities and to many jobs” and the disability resulted from the wear and tear incidental to these common activities over a lengthy period.) *Blanchette* explains further that “[t]he key, in a case involving G.L. c. 32, § 7(1), once the physical or mental disability is established, is proof that the identifiable condition at work is an efficient cause of the disability.” 20 Mass. App. Ct. at 487 n. 7, 481 N.E.2d at 221 n.7.

Timely notice to the retirement board of the injury sustained or hazard undergone is a prerequisite for receiving accidental disability retirement benefits. Whether the disability asserted is physical or psychological, the injury sustained or hazard undergone on which an accidental disability retirement may be based is limited to events that occurred, or to hazards that were undergone, within two years prior to the filing of the retirement application, unless the applicant or someone on his behalf gave written notice of an earlier event or hazard to the retirement board “within ninety days after its occurrence,” M.G.L. c. 32, § 7(1), or some other exception applies. *See, e.g., Ackerman v. Worcester Regional Retirement Bd.*, Docket No. CR-11-405, Decision (Mass. Div. of Admin. Law App., Aug. 5, 2016.)

M.G.L. c. 32, § 7(3) recites one such exception that might have been relevant here had it occurred—the retirement system member’s receipt of payments on account of an earlier-occurring

injury or hazard pursuant to M.G.L. c. 152, the Workers' Compensation Statute. This exception does not apply here, however, because it is undisputed that Mr. Adams did not file a workers' compensation benefits application until September 8, 2008, after he had filed his accidental disability retirement application. (*See* Finding 46 n.7.)

Mr. Adams asserted no other exception to the notice requirement prescribed by M.G.L. c. 32, § 7(1); instead, he argued that he suffered continuing injury or exposure following the 2001 student suicide—"ongoing work closely with students" that worsened his condition until February 2008, when he could no longer work in a school setting. Not surprisingly, Mr. Adams seeks to have the time for giving the notice required by the statute computed from the end of this alleged continuing injury or exposure, rather than from the student's suicide in March 2001.

1. Absence of Timely Notice

Mr. Adams's accidental disability retirement application must be denied because he did not satisfy the notice provision of M.G.L. c. 32, § 7(1), which requires that the permanently-disabling injury must have occurred within two years before the application was filed or, if it occurred earlier, that a written notice of injury must have been filed with the appropriate retirement board (here, MTRS) within ninety days of each such occurrence.

For the reasons stated below, I reject, as contrary to Mr. Adams's testimony and the remainder of the record, his argument that he did not understand the connection between the March 2001 student suicide and his subsequent psychological deterioration and renewed substance abuse until after he stopped working at the school in early 2008, and that, as a result, his time to give notice

as to the student's suicide did not start running until then. Because Mr. Adams filed no notice regarding the student's March 6, 2001 suicide or any other traumatic event he claims—his interactions or encounters with students at the school—his accidental disability retirement claim is confined to those student interactions or encounters that occurred within the two years preceding his application, which was filed on July 6, 2008. As was true over the full course of his teaching career, however, his interactions or encounters with students over the two year period preceding his accidental disability retirement application were not inflictions of injury or hazard upon him, and were, instead, instances in which Mr. Adams performed a daily duty required of him as a teacher, namely working and interacting with students. There was certainly nothing that distinguished his required interaction with students as “an identifiable condition” not common to all or a great many occupations, or even to the teaching profession.

a. The parties' respective positions as to the prior notice obligation

After the hearing, I ordered the parties to clarify, in their respective post-hearing memoranda, their positions on the following issues: (1) Whether the injury sustained or hazard undergone for which Mr. Adams applied for an accidental disability retirement occurred within two years preceding his July 9, 2009 retirement application and, if not, what legal effect this should have on his application and this appeal; and (2) Whether notice was given to MTRS of the injury or hazard undergone that Mr. Adams alleges, or of subsequent injury to him, and, if so, when it was given and which exhibit(s) include such notice. *See Post-Hearing Order* (Aug. 18, 2017).

Mr. Adams filed a post-hearing memorandum on October 27, 2017. It reiterated his

argument that the medical panel majority erred in finding that his psychological disability was not work-related. He also asserted that he injury on which he based his accidental disability retirement application—post-traumatic stress disorder, major depression, and anxiety as a result of ongoing exposure to stressful experiences—occurred within two years before he filed his retirement application on July 6, 2008, even though the student's suicide had occurred on March 7, 2001. (Adams post-hearing mem. at 5.) Mr. Adams asserted that his time to give notice of his psychological injury was, or should be deemed to have been, tolled until he knew or should have known of a causal relationship between the injury and the “triggering event.” (*Id.* at 6.) He asserted two such triggering events. One occurred in early 2008, when he believed he had not been effective in advocating on behalf of a female student who felt she had been touched inappropriately by a teacher, shortly after which he was hospitalized and his psychiatrist recommended that he discontinue work. Another occurred after he stopped working and in February 2008, more specifically in May 2008 during a counseling session with Ms. Gurney, who noted that he had “started to recognize how the issue of suicide really affected him,” and “he explained how he didn’t know or understand what was happening to him.” (*Id.*) Based upon a belated awareness triggered by either of these two events, Mr. Adams argued, he filed his accidental disability retirement application “within two years of when he first knew or should have known of the causal connection between his injury and disability.” (*Id.*)

MTRS filed a post-hearing memorandum on October 30, 2017. As to the injury notice requirements of M.G.L. c. 32, § 7(1), MTRS argued that Mr. Adams presented no evidence that he attempted to give notice of his claimed injury, other than his statement in his accidental disability

retirement application that he tried to file a notice at work but was advised that he could not do so. (See Finding 45.) MTRS also argued that Mr. Adams had not proven that his claimed disability was work-related. In its view, Mr. Adams had characterized the student suicide on which he based his accidental disability retirement claim application as a “hazard undergone” rather than as an injury sustained and, as a result, the basis for his accidental disability retirement application was a singular event—the March 7, 2001 student suicide—rather than a series of workplace injuries or exposures. Even if an accidental disability retirement based upon this singular event was not time-barred for lack of notice, MTRS argued further, Mr. Adams did not show that the suicide precipitated his disability, particularly since he worked as a teacher for nearly seven years afterward; nor did he show that he was exposed to an identifiable condition that was neither common nor necessary to all or a great many occupations. MTRS also emphasized that Mr. Adams had an underlying and long-standing history of alcohol and drug abuse that pre-dated the 2001 student suicide, one of the factors that left the medical panel majority unable to conclude that the cause of his permanent psychological disability was related to his teaching job or to the stresses of working with students.

b. Injury, exacerbation, and when work-related causation was apparent

I address, first, Mr. Adams’s contention that he was unaware of the connection between the student’s March 6, 2001 suicide and his disability for several years, until early 2008, either while he was still working at the school, or after he stopped working at the school in February 2008. I find this contention to be without support in his testimony or elsewhere in the record.

I begin by noting that neither party cited any retirement-related authority recognizing or

rejecting the proposition that the time for giving the notice of injury required by M.G.L. c. 32, § 7(1) does not accrue, or is tolled, until an accidental disability retirement applicant “knew, or should have known, of a causal relationship between the injurious symptoms and the triggering event.” (Petitioner’s post-hearing mem. at 6.) The facts presented here do not require that I resolve the point, and at any rate the parties have not briefed the issue sufficiently for me to resolve it. Instead, I go no further than to determine that the facts presented do not show a belated discovery by Mr. Adams of the causal relationship between the March 2001 student suicide and the disabling psychological deterioration he experienced subsequently. Therefore, even if accrual of the notice of injury obligation imposed by M.G.L. c. 32, § 7(1) could be tolled as a matter of law based upon deferred understanding of a causal relationship between injurious symptoms and a triggering event, the record presents no basis for concluding that Mr. Adams’s obligation to give notice of his psychological injury was tolled to some point within the two years preceding his July 8, 2008 accidental disability retirement application.

As to what Mr. Adams knew about a causal nexus and when he knew it, I begin with Ms. Gurney’s May 27, 2008 counseling notes on which Mr. Adams relies in asserting that his obligation to give notice to MTRS was tolled. He contends that these notes document his belated awareness of a causal relationship between the 2001 student suicide and his subsequent psychological deterioration.

Ms. Gurney’s notes for Mr. Adams’s May 27, 2008 state:

Client reports good and bad days trying to keep head straight. Starting to recognize that issue of suicide really affected him. Explained how he didn’t know or understand what was happening to him. “Felt weak and embarrassed by thoughts.”

Explained how alcohol and drug use was a way to try to shut off mind.” Again attempted to explain what PTSD is. Believe situation of not being listened to, sense of powerlessness to get help for students etc. replicated own exper[ience] in childhood of neglect. Questioned if he saw his own pain in [J.E.]? Became very anxious–“I don’t know!”

(Exh. 9 at 19: counseling notes of Linda Gurney, 5/27/08.)

Ms. Gurney’s notes do not make clear whether the phrase in her May 27, 2008 notes “s]tarting to recognize that issue of suicide really affected him” related what Mr. Adams told her, or related her own clinical assessment of Mr. Adams’s state of mind. Whatever was intended, this was not the first entry Ms. Gurney made in her notes regarding the effect of the student suicide upon Mr. Adams. During his first meeting with her nearly two years and nine months earlier, on September 6, 2005, Mr. Adams told Ms. Gurney that “his head won’t stop with thoughts from past” and that he wanted to “deal with” a “student who committed suicide” but had difficulty discussing it and could not “get thoughts out of his mind,” and also felt that others, including social worker Jason Niremberg, did not believe him. (*See Finding 21 above.*) Ms. Gurney’s May 27, 2008 notes do not show reliably, therefore, that Mr. Adams did not discover, or first become aware of, the relationship between the student suicide and his subsequent psychological deterioration until that date or some other time in 2008.

Mr. Adams was undoubtedly aware, before the student’s suicide, that he had an underlying substance abuse issue and needed to keep it under control because it could be “triggered” into relapsing. His history of substance abuse history dates back to at least 1994, when, after 15 years of what appears to have been a successful automotive-related career in the private sector, he was admitted to a detoxification program at Arbour Hospital following excessive drinking. (*Finding 3.*)

His history of back pain leading to opioid pain medication use dates to his 1996 auto accident. (Finding 4.) He appears to have been sufficiently focused afterward and able, as well, to control his underlying substance abuse problem. He raised his two children, attended night school so that he could obtain a teaching license, and secured, in 1997, a permanent teaching position as an automotive instructor at Greater New Bedford Vocational Technical High School. (Finding 5.) He apparently managed his professional duties and responsibilities over the next four years, including working closely and interacting with his students. One of those students was J.E., who presented a challenge because he attempted to obtain Mr. Adams's assistance regarding personal problems. Even though Mr. Adams saw similarities between J.E. and his own brother, if not with his own childhood experiences (*see* Finding 8), he was able to steer discussions with the student away from personal issues and focus on the student's school performance. (*See* Findings 7-10.) That limitation was a professional one, rather than a symptom of Mr. Adams's inability to cope—it was related to Mr. Adams's awareness of being a mandatory reporter of confidential personal information the student might share with him, and he referred the student to counselors who were in a better position to maintain confidentiality. (Findings 8, 10.)

Until he learned of J.E.'s suicide on March 7, 2001, Mr. Adams had been able to keep under control whatever underlying tendency he had toward substance abuse, or at least subordinate that tendency to his professional responsibilities. His ability to do so was challenged profoundly when he learned of the student's suicide. The news shocked him. He was immediately upset that he had not had an opportunity to speak with J.E. the day before, and he felt guilty that he had told J.E. to wait rather than drop what he had been doing in order to assist him. Mr. Adams experienced an

immediate sense of deteriorating ability to interact effectively with his students, as he found it difficult to console them about J.E.'s suicide or explain it to them. (Finding 12.) He continued to teach through the end of the 2000-02 semester, but found himself easily distracted and had difficulty concentrating; in addition, he began to experience anxiety symptoms and headaches at work as the semester ended, and the student's suicide "popped into" his mind and he found himself having "no idea what was going on"—thoughts and feelings that would persist during the semesters that followed. (Finding 13.) Although being away from the school during the summer of 2001 helped Mr. Adams somewhat, J.E.'s suicide still "popped into" his mind, and as the next semester began in September 2001, Mr. Adams felt increasingly tense and anxious about letting his students down, beset by thoughts that made no sense to him, increasingly unable to perform his duties as a teacher without difficulty, being more "stand-offish" with his students, and feeling ineffective in advocating for them to with the school administration. (Finding 14.) Although he took only several days of sick leave during the 2001-02 school year, by 2002 he was experiencing anxiety, sleeping difficulty and "crazy dreams" to the extent that he was "looking for something to stop that" and began drinking, first occasionally and then frequently. (Findings 15, 16.)

In short, although he would not seek professional help until 2005, Mr. Adams knew from March 7, 2001 on that J.E.'s suicide had affected him profoundly, that it was dominating his thoughts, blocking his ability to focus, and interfering with his ability to perform the duties of his job as a teacher, which included encountering and working closely with students. It was one of the substance abuse triggers for which he had been on guard since at least 1994. By early 2002, he was aware that the suicide and the effects it had upon him had driven him back to abusing alcohol and

drugs.

If there is any doubt that Mr. Adams understood early on that these effects were related to the student's suicide, he knew, or should have known, of this association by early 2005. He was out of work far more frequently than he had been before, and would end up using 46 paid days of sick leave by the end of the 2004-05 school year. (Finding 17.) Mr. Adams's supervisor at the school suggested that he seek counseling through the Outlook Employee Assistance Program, and he did not resist the suggestion; clearly, he knew he had a serious problem that had started to affect his work, and he could no longer avoid attempting to deal with it. Mr. Adams began meeting with social worker Jason Niremberg in late May 2005 and was referred to Gosnold Treatment Center on account of his use of Oxycontin and excessive alcohol consumption over the preceding three years, as well as for his more-recently commenced heroin snorting. (Findings 8, 19.) It is doubtful he believed that his renewed substance abuse and his depression were events without a related cause, and he did not so testify; indeed, when asked during his direct examination whether he had linked this substance abuse to J.E.'s suicide in his own mind by 2005, when he entered the Employee Assistance Program, Mr. Adams answered "Yes I did." (Adams direct testimony.)

Mr. Adams mentioned the student's suicide to social worker Linda Gurney on September 6, 2005, when he first met with her. He told Ms. Gurney that his "head won't stop with thoughts from [the] past" and that he wanted to "deal with" a "student who committed suicide" but had difficulty discussing it and could not "get thoughts out of his mind." (Finding 21.) Absent any testimony by Mr. Adams to the contrary, and with no evidence that thoughts about any other subject had obsessed him similarly, the only "thoughts from the past" to which he was referring when he first met with

Ms. Gurney were those pertaining to J.E.'s suicide on March 6, 2001. By September 6, 2005 at the latest, thus, Mr. Adams, and possibly Ms. Gurney as well, recognized that the student's suicide had affected him profoundly, so much so that on many days he was unable to make it to work at the school, and was unable to perform his job duties, including interacting and working with students when he did show up for work.

This is not a case, then, in which an injury did not manifest itself early on and could not have been sooner discovered, or where the injured employee had no idea he was injured or, if he did, what had likely caused the injury or when it had done so. Mr. Adams's testimony, and the medical records, convince me that he knew almost immediately that the student's March 7, 2001 suicide had affected him to the core, that he was abusing alcohol and drugs in order to dull his guilt-driven thoughts about the suicide, and that his ability to perform his teacher duties was deteriorating as a result. This appears to be what Mr. Adams was trying to tell the social workers who tried to help him, beginning in 2005. He was seeking a way to deal with the student's suicide, and knew that unless he could do so, he would relapse into an unending cycle of drinking and drug abuse and seeking temporary relief through detox programs, which is precisely what happened here. Consequently, it defies credibility for Mr. Adams to assert in his post-hearing memorandum (at 6) that he did not know or understand that the suicide was the "triggering event" that set off his injurious symptoms, and that he did not really understand this until May 2008—well after he had been through several detoxes and many sessions of counseling and had been dismissed by the school for excessive absenteeism and inability to perform his teacher duties.

As do his medical and counseling records, Mr. Adams's testimony shows that he was

confused as to why J.E. had taken his life, and whether he could have prevented it by stopping what he was doing and meeting with the student earlier on March 6, 2001 when J.E. suddenly appeared in Mr. Adams's classroom. Mr. Adams also could not understand why the student's suicide had transformed him as profoundly as it did, leaving him with confused thoughts, making him reclusive and unable to cope with students, and precipitating his return to alcohol and drug abuse, although much of that confusion was undoubtedly exacerbated by ongoing substance abuse for months at a time. He was also confused about how he could escape from the downward spiral he knew he was in. All of that confusion related to the extent to which the student's March 6, 2001 suicide had affected him, and how he could escape from the emotional and functional deterioration that he experienced afterward. However, there was no confusion on Mr. Adams's part as to whether the suicide had anything to do with his state of mind or his increasing inability to perform his teacher duties or even show up for work. He knew early on that it did. He also mentioned the student's suicide with his care providers regularly once he sought professional help, beginning in 2005—still well beyond the two years preceding his accidental disability retirement application on July 6, 2008.

There was, thus, no belated discovery by Mr. Adams of the connection between the student's suicide and his psychological deterioration that delayed the accrual of his time to notify MTRS as to the March 6, 2001 student suicide and its disabling effect upon him, certainly not for more than seven years to early July 2008, and not to any other time within the two years prior to July 6, 2008, when he filed his accidental disability retirement application.

c. No ongoing injury or exposure following the student's suicide within the two years preceding his accidental disability retirement application

The only remaining factor material to both causation and the notice of injury requirement is whether the psychological disability that followed the student's suicide in March 2001 (and as to which Mr. Adams gave no notice to MTRS) was aggravated to the point of permanent disability by injury or exposure that occurred during the two years prior to July 6, 2008, when he filed his accidental disability retirement application.

Although the two-year limit on disabling injuries that M.G.L. c. 32, § 7(1) recites bars accidental disability retirement based upon a psychologically-disabling injury or exposure that occurred more than two years before the retirement application was filed, an accidental disability retirement application could be allowed if an injury or exposure within the two-year period aggravated an earlier-occurring psychological problem to the point of permanent disability. *See Donatelli v. State Bd. of Retirement*, Docket No. CR-13-496, Decision at 20 (Mass. Div. of Admin. Law App., Mar. 21, 2018), *citing Baruffaldi v. Contributory Ret. Appeal Bd.*, 337 Mass. 495, 501, 150 N.E.2d 269, 272 (1958) (aggravation of pre-existing disease is compensable for workers' compensation purposes and is also an injury for accidental disability retirement purposes).

Mr. Adams asserts that he sustained an ongoing hazard or exposure, in the form of ongoing work with students that worsened his condition, thereby pushing his injury to within two years preceding his accidental disability retirement application and making the two-year notice requirement of M.G.L. c. 32, § 7(1) inapplicable. The argument is without merit because it conflates

performing a fundamental teaching duty—working and interacting with students—with a continuing injury or with an ongoing hazard or exposure.

Mr. Adams's job duties as an automotive technology teacher at the school included working with students to promote their learning and orderly behavior while maintaining their dignity and positive self-concept, and building good interpersonal relationships and establishing positive rapport with students. (See Finding 6.) Carrying out these duties necessarily required "encounters" with students and working closely with them, the very events he asserts as comprising the "ongoing exposure" element of his accidental disability retirement claim. It may even be said that these activities are fundamental to teaching. Mr. Adams did not testify that his work or encounters with his students were dangerous or hazardous in any way. If indeed he identified a "hazard" that was inherent in these encounters, it was that students at the school were all too willing to engage him in discussions of their personal problems, something he appeared able to limit, based upon his understanding of the teacher's role as a mandatory reporter, by referring students presenting personal issues to counselors who could better maintain confidentiality. It became increasingly difficult for Mr. Adams to do this, or to work or interact with students, following J.E.'s suicide in March 2001, but this was not the result of exposure to a workplace hazard that exacerbated the psychological injury that the student's suicide had caused him. It was, instead, a symptom of the psychological disability he sustained following the 2001 student suicide. Mr. Adams cites no authority supporting the proposition that working with or encountering one's students is, or may be considered to be, a hazardous or psychologically-disabling exposure for teachers *per se*, and I have found none.

For all of these reasons, I am unable to find that having to work with or encounter students

within the two years preceding his accidental disability retirement application in July 2008 subjected Mr. Adams to an ongoing injury or exposure to a hazard that aggravated an earlier-occurring psychological problem to the point of permanent disability and created an exception to the two-year notice requirement recited by M.G.L. c. 32, § 7(1). He did not give the notice required by M.G.L. c. 32, § 7(1) with respect to the March 2001 student suicide, which is the injury sustained or hazard undergone on which Mr. Adams based his accidental disability retirement application. He gave no notice of the psychological injury he claimed until he filed his accidental disability retirement application with MTRS more than seven years later, on July 8, 2008. There was no tolling (or “delayed accrual”) of his time to give the MTRS the notice that the statute required. Encountering and working with his students, both before and after the student’s suicide in 2001, was integral to Mr. Adams’s performance of his teaching duties, not an exposure to a work hazard or the exacerbation of the earlier psychological injury he sustained.

2. Insufficient Proof of Work-Related Causation

Even if the statutory notice requirement had been satisfied here, Mr. Adams cannot prevail. He has not proved by a preponderance of the evidence that his psychological injury had a work-related cause, or that he is entitled to a new medical panel on that issue.

A retirement system member seeking accidental disability retirement benefits must demonstrate that his disability stemmed from a single work-related event or series of events or, if his disability was the product of gradual deterioration, that his employment had exposed him to an identifiable condition that is not common or necessary to all or a great many occupations.

McDonough v. State Bd. of Retirement, Docket No. CR-15-98, Decision at 10 (Mass. Div. of Admin. Law App., Sept. 8, 2017), *citing Blanchette*. In the context of accidental disability retirement, “personal injury . . . is . . . to be given the same meaning as the identical term used in the workers’ compensation act, [M]. G.L. c. 152, § 1(7A).” *Sugrue v. Contributory Retirement Bd.*, 45 Mass. App. Ct. 1, 4, 694 N.E.2d 391, 393 (1998). M.G.L. c. 152, § 1(7)(A) provides in pertinent part that “[p]ersonal injuries shall include mental or emotional disabilities only where the predominant contributing cause of such disability is an event or series of events occurring within any employment.” Therefore, for a psychological disability to qualify as a personal injury or hazard undergone under M.G.L. c. 32, § 7(1) (which it may, per *Blanchette*), and, thus, to qualify a retirement system member for an accidental disability retirement, the predominant contributing cause of the disability must be an event or series of events occurring within the member’s employment. *McDonough*, Decision at 10.

It was Mr. Adams’s burden to show that this was indeed the case here. To show that the events or series of events Mr. Adams identified in his accidental disability retirement application (the March 2001 student suicide and, afterward, each encounter with his students) qualified him for this type of retirement, he needed to show that these events were not only the predominant cause of his disability but also that they had occurred within his employment. If any of these events occurred within his employment, Mr. Adams also had to show that they presented a hazard that was not common or necessary to all or a great many occupations.

Mr. Adams cannot make this showing in view of the medical panel majority’s negative opinion as to causation, and absent evidence that this opinion was the product of error.

A majority of the medical panel found no work-related causation for the psychological injury Mr. Adams claimed. Neither the retirement board, nor DALA, may ignore that negative finding unless it is clear that the panel employed an “erroneous standard” or did not follow proper procedure, or if its decision was “plainly wrong.” *Kelley v. Contributory Retirement App. Bd.*, 341 Mass. 611, 617, 171 N.E. 2d 277 (1961);⁹ *see also Foley v. Springfield Retirement System*, Docket No. CR-16-222, Decision at 10 (Mass. Div. of Admin. Law App., Feb. 28, 2018). The burden of proving such error falls squarely upon the party challenging a retirement board’s denial of an accidental disability retirement application based upon the medical panel majority’s negative response as to incapacity, its likely permanence and/or its work-related causation. *Retirement Bd. of Revere v. Contributory Retirement Appeal Bd.*, 36 Mass. App. Ct. 99, 106, 629 N.E.2d 332, 337 (Mass. App. Ct. 1994), *rev. denied*, 417 Mass. 1105, 635 N.E.2d 252 (1994); *see also David v. State Bd. of Retirement*, Docket No. CR-09-615 (Mass. Div. of Admin. Law App., Aug. 10, 2012).

Foley held that DALA cannot substitute its judgment for that of the medical panel majority when the majority has performed its function properly, which it did in that case by (1) obtaining the petitioner’s medical history; (2) performing a detailed clinical examination of him; (3) before reaching an opinion, reviewing pertinent medical reports and related diagnostic studies pertaining to the petitioner’s treatment for the injury he alleged as having caused or exacerbated his disability; and (4) stating the grounds on which it concluded that the petitioner’s incapacity was “not such as

⁹/ “Failure to follow proper procedure” includes improper panel composition, and a “plainly wrong decision” includes panel findings that were made without reviewing all the pertinent facts. *See, e.g., Retirement Bd. of Revere v. Contributory Retirement Appeal Bd.*, 36 Mass. App. Ct. 99, 106, 629 N.E.2d 332, 337 (Mass. App. Ct. 1994), *rev. denied*, 417 Mass. 1105, 635 N.E.2d 252 (1994).

might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed,” which, per M.G.L. c. 32, § 7(1), was the precise causation question the medical panel was called upon to address. I find this analysis both helpful and applied appropriately in the circumstances presented here.

First, both medical panel majority members, Dr. Hamer and Dr. Sarid-Segal, interviewed Mr. Adams and obtained his medical history, including his personal and family history, history of substance abuse, and history of psychotherapy, diagnoses and medication. (*Id.*) During the interview, each also obtained Mr. Adams’s description of how the student’s suicide in March 2001 affected his mental state and job performance, and of his current conditions, including anxiety, alternating slow thinking and racing thoughts, and inability to concentrate. (Exh. 16: Dr. Hamer’s report at 1-2; Exh. 17: Dr. Sarid-Segal’s report at 2-3.)

Second, both Dr. Hamer and Dr. Sarid-Segal performed a mental status examination that assessed factors including Mr. Adams’s appearance, orientation, cognitive function, affect, speech coherence and relevance, emotions, organization of thought, and reliability in answering questions and describing his symptoms and substance use. (Exh. 16: Dr. Hamer’s report at 3; Exh. 17: Dr. Sarid-Segal’s report at 3.)

Third, before reaching an opinion, both Dr. Hamer and Dr. Sarid-Segal reviewed the medical records and job description that were forwarded to them before they met with Mr. Adams. (Findings 51 and 56.)

Finally, both physicians stated the grounds upon which they concluded that Mr. Adams’s incapacity was “not such as might be the natural and proximate result of the personal injury sustained

or hazard undergone on account of which retirement is claimed.”

Dr. Hamer explained her conclusion as to causation thus: Bearing in mind that Mr. Adams worked for a number of years following the 2001 student suicide, she was not certain that Mr. Adams's job performance-impairing problems had their origin in post-traumatic stress disorder. Absent active substance abuse such as intoxication or withdrawal, his complaints and signs, including impaired cognitive function, suggested to Dr. Hamer the possibility that Mr. Adams was exhibiting symptoms of bipolar disorder and/or dementing disorder. She attributed his inability to perform the duties of his teaching job to impaired cognitive function. Dr. Hamer also opined that “the remote and probably most important cause of his presumed PTSD, as it is understood, seems related to his childhood experiences of possible neglect and abuse.” (Finding 52; Exh. 16: Dr. Hamer's report at 3.) In responding to a request by Mr. Adams's counsel that she clarify her opinion as to his diagnosis and whether his condition was the result of a personal injury or hazard undergone while he was performing his job duties at the school, Dr. Hamer stated that she had been unable to elicit sufficient information from him regarding symptoms and signs to give him a definitive PTSD diagnosis, and that the depression he exhibited “could not be linked to his job performance with any degree of certainty.” (Finding 55.)

Dr. Sarid Segal explained her negative opinion as to work-related causation thus: What she described as a tendency on Mr. Adams's part to become emotionally over-involved with his students may have been related to his over-identification with them based upon his own childhood trauma, and that while the student's suicide was “undoubtedly traumatic” to him, leading to grief and bringing on substance abuse relapse, it was Dr. Sarid-Segal's “belief that most of the symptoms

described by Mr. Adams can be attributed [to] the depression he experiences and to his extensive substance use,” the history of which preceded the student’s suicide and extended back to his twenties. (Finding 59; Exh. 17: Dr. Sarid-Segal’s report at 4.) In responding to a request by Mr. Adams’s counsel that she clarify her opinion as to causation, Dr. Sarid-Segal explained that she did not diagnose Mr. Adams with PTSD, as he did not experience PTSD’s diagnostic “symptom constellation,” and that she found his symptoms to be consistent, instead, with major depression. Dr. Sarid-Segal also explained that she could not definitively relate Mr. Adams’s grief and sadness as a result of the student’s suicide to Mr. Adams’s substance abuse relapse because he was “defensive and evasive” when she asked him about it, and made statements during his interview that “directly contradicted the reports in his multiple detoxification admissions of the amount and frequency of his alcohol use.” (Finding 60.)

There is no allegation that the medical panel was improperly composed. The panel performed its function properly. The two physician members comprising the panel majority answered the statutory question regarding work-related causation based upon their examination of Mr. Adams and their review of the medical records and job duty information presented to them, and they stated sufficiently the grounds for their negative opinion as to causation. There is no evidence that the panel majority employed an “erroneous standard” or that its decision was “plainly wrong.” As a result, MTRS could not ignore the panel majority’s negative finding as to work-related causation, and it relied upon that negative finding appropriately in denying Mr. Adams’s application for accidental disability retirement benefits.

Conclusion

Mr. Adams did not give timely notice to MTRS of the psychological injury he suffered following the student's March 2001 suicide. Per M.G.L. c. 32, § 7(1), Mr. Adams was required to give that notice within the two years preceding his accidental disability retirement application on July 6, 2008. He did not do so, and for this reason, the student's suicide and the psychological injury Mr. Adams experienced subsequently cannot be the basis for an accidental disability retirement claim.

Even if failure to give the required notice were not dispositive, Mr. Adams did not sustain his burden of proving that the events or series of events he identified in his accidental disability retirement application (the March 2001 student suicide and, afterward, each encounter with his students) were not only the predominant cause of his psychological disability but also that they occurred within his employment and, if they did, that encountering and interacting with his students presented a hazard that was not common or necessary to all or a great many occupations, or even to teaching. His exposures or interactions with students were not a work-related injury or hazard undergone, and cannot justify an accidental disability retirement based upon work-related injury or hazardous exposure. They were also not "triggering events" that exacerbated the psychological deterioration Mr. Adams experienced following the student's 2001 suicide. They were, instead, essential to the performance of a fundamental teaching duty—working and interacting with one's students. These student encounters and interactions also did not toll Mr. Adams's obligation under M.G.L. c. 32, § 7(1) to give notice injury to within the two-year period preceding his accidental disability retirement application on July 6, 2008, even if the obligation to give the required the notice

of injury is subject to tolling or deferred accrual based upon delayed knowledge of a causal nexus between the student's March 2001 suicide and his subsequent psychological deterioration. The record shows that Mr. Adams was aware of this causal nexus almost immediately, and certainly by the time he began counseling with Ms. Gurney in September 2005, which was still beyond the two years preceding his accidental disability retirement application.

Disposition

MTRS's denial of Mr. Adams's accidental disability retirement application is therefore affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: May 25, 2018