

NEWTON RETIREMENT BOARD
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By City Clerk at 10:53 am, Sep 04, 2020

Memorandum

DATE: September 4, 2020
TO: Mayor Ruthanne Fuller
FROM: Kelly Byrne, Director, Newton Retirement Board 
RE: Performance of Essential Duties/Application for Accidental Disability Retirement

The Newton Retirement Board has voted to circulate the attached letter, on an annual basis, to city/school officials, department heads and union representatives as an important reminder of the strict legal standard that members of the retirement system must meet in applying for an accidental disability retirement (job-related injury).

This subject matter is often discussed at retirement seminars attended by board members and staff and continues to be a sticking point in many appeal cases across the Commonwealth. The standard to be met for an accidental disability retirement is more stringent than the standard to be met for workers compensation benefits. The standard for an accidental disability retirement requires that the injury must result from one's duties and be sustained while in the performance of one's duties.

The retirement board strongly recommends that city/school officials, department heads and union representatives ensure that all employees perform only the duties expressed in their job descriptions

This information is also being circulated as an inter-office departmental posting. We ask that it be made easily accessible for employees to review.

Thank you.

cc: City Council
School Committee
Department Heads
Union Representatives
Departmental Posting

Newton Contributory Retirement System

CITY HALL

1000 COMMONWEALTH AVENUE

NEWTON CENTRE, MASSACHUSETTS 02459-1449

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March 18, 2010

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Dear Department Heads and Union Officials:

The Newton Retirement Board (Board) has become aware of confusion on the part of a number of injured employees regarding eligibility for accidental disability retirement benefits under G.L. c.32, the public employee retirement law. Specifically, many employees as well as their department heads assume that a disabling condition caused by any accident or injury which occurs in the workplace or arising out of the job will entitle the employee to an accidental disability retirement. Unfortunately, this is not always the case, and the Board wishes to alert you in order to avoid unpleasant surprises for you or your employees that may result from this misconception.

Under certain circumstances, disabling accidents or injuries which occur in the workplace, even if they make employees eligible for workers' compensation or G.L. c. 41 § 111F injured-on-duty benefits (for public safety officers), do not necessarily make employees eligible for accidental disability retirement under c.32, §7 (hereinafter §7). Several recent Massachusetts cases have clarified this issue, explaining that retirement law has a more stringent standard for eligibility than do the laws pertaining to workers compensation or §111F.

It is well settled in Massachusetts that §7 "requires not only that the injuries must result from one's duties but that they must also be sustained 'while in the performance' of those duties. The requirements are conjunctive." *Boston Retirement Board v. CRAB*, 340 Mass. 109 (1959) [emphasis added]. In that case, an employee was injured in the workplace on her employer's premises while returning to work after lunch. The court held that the employee was not injured "while in the performance" of her duties. The courts continue to uphold this standard. In *Richard v. Worcester Retirement Board & CRAB*, 726 N.E. 2d 405 (2000), the court explained that the causation standard of the workers' compensation act "is far less restrictive than that of the accidental disability retirement statute."

Department Heads and Union Officials

March 18, 2010

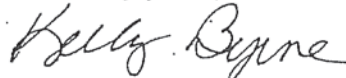
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The Appeals Court recently upheld and explained this standard in *Damiano v. CRAB*, 72 Mass. App.Ct. 259 (2008). Theresa Damiano was a civilian 911 police dispatcher. After working for about an hour one morning, she stood up. Suddenly, a police officer approached her from behind and placed her in a headlock, intending horseplay. He pulled Damiano across the room until they both fell to the floor. Damiano sustained permanently disabling injuries. In denying her claim for accidental disability retirement benefits, the Court stated that the "...statutory requirement necessitates that the claimed injury be sustained 'in the line of duty' – that is, during the actual performance of the duties that the employee has undertaken to perform on behalf of the public." [emphasis supplied]: The Court held that Damiano's injury had nothing to do with the performance of her duties and that she sustained her injuries "on account of an intervening fortuity unrelated to her job and while not actually engaged in the performance of her job."

In another recent case, the Court denied an accidental disability retirement on the following facts. James Connolly was a Winthrop Building Inspector whose written job description stated that the position entailed "negligible physical effort while performing office duties." He became totally disabled due to a back injury after attempting to change the office water bottle. The Winthrop Retirement Board denied his application. On appeal, the Contributory Retirement Appeal Board (CRAB) affirmed the denial stating: "The issue was not whether moving the bottle was 'permissible,' but whether it was one of his 'duties,' something that he was required to do as a part of his employment. We hold that it was not." In its decision of March 12, 2009, the Appeals Court upheld the denial. *Connolly v. CRAB*, 73 Mass.App.Ct. 1127.

Of course, every application for accidental disability retirement benefits is evaluated on a case by case basis and the determination on each case is made by the Board. We hope, however that these cases illustrate the complexity of the issues for you and that you keep these issues in mind prior to advising injured employees. If you or your employees have questions, please contact Kelly Byrne, the Board's Director.

Very truly yours,



Kelly Byrne, Director
Newton Retirement Board