

IN THE MATTER OF:
ELIZABETH McNICHOLAS (nee Judd)
6606 ACCIPITER DRIVE
NEW MARKET, MD 21774

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO.: CBA-25-001

Re: Appeal of Disability Retirement Denial

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County (“Board”) on appeal filed by Elizabeth McNicholas, Applicant/Appellant, of a decision by the Administrative Law Judge (“ALJ”) Derek J. Baumgardner dated June 17, 2024, denying Appellant’s request for disability retirement by the Baltimore County Employees’ Retirement System (“ERS”) Board of Trustees pursuant to Baltimore County Code (“BCC”) § 5-1-220.2. The Appellant submitted a Motion for Reconsideration on June 20, 2024, which the ALJ denied on July 5, 2024.

The Board held a hearing, on the record below, on October 17, 2024. Appellant, Ms. McNicholas, appeared *pro se*, and the ERS was represented by Lisa J. Smith, Assistant County Attorney.

FACTS

Elizabeth McNicholas was a civilian, non-sworn employee of the Baltimore County Police Department for over 23 years, where she worked primarily as an Office Assistant. At some time prior to June of 2021, she applied for and was accepted into the police academy (“academy”) to become a sworn officer. Her training as a police recruit began in June 2021. In November of 2021, Ms. McNicholas was involved in an incident at the academy wherein she

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was injured during physical training and was unable to complete the academy. Due to her injuries, she sought emergency room treatment and has undergone a series of surgeries and treatments from medical specialists.

Ms. McNicholas applied for an accidental disability retirement on July 30, 2023. In a letter dated March 12, 2024 and based on a review of the Medical Board finding that Appellant is "...mentally or physically incapacitated for the further performance of duty...", her condition "...does not result in permanent physical disability..." that consequently the ERS was required to take "No Action" in the matter, functionally denying the claim. Ms. McNicholas appealed to the Office of Administrative Hearings.

Before the ALJ in a *de novo* hearing, the Appellant, representing herself, argued that she is entitled to disability retirement as a police officer because she is permanently disabled and unable to perform the duties of a police officer, or any job, due to disabilities suffered on the job. The Appellant offered a number of exhibits during the hearing concerning her medical status and offered testimony describing the incidents and describing the daily pain and discomfort she experiences as a result of the incidents. She testified as to her belief that her physical and mental disabilities are permanent. She did not call any witnesses. She argued that for these purposes she should be considered a police officer and not an office assistant, and that she was permanently disabled for the purposes of performing the duties of a police officer. She acknowledged that she was not a sworn police officer.

Reviewing the evidence and testimony produced during the hearing, the ALJ determined that Ms. McNicholas' application was correctly evaluated under her classification as an Office Assistant, which was the position she held at the time she made the accidental disability retirement application, pursuant to the requirements of BCC 5-1-223. The ALJ found

that while Ms. McNicholas' injuries were work-related and as the result of a work-related incident, that she was not able to provide any credible evidence to show that she was totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place and for those reasons denied Ms. McNicholas' appeal.

STANDARD OF REVIEW

BCC §§ 5-1-220.2 provides that, the Board of Appeals hearing shall be limited to the record created before the Office of Administrative Hearings, which shall include the recording of the testimony presented to the Office of Administrative Hearings and all exhibits and other papers filed with the Office of Administrative Hearings. Upon review of the transcript and evidence in the record, this Board has the authority to:

- (i) Remand the case to the Office of Administrative Hearings;
- (ii) Affirm the final order of the Office of Administrative Hearings; or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Board of Trustees or the Office of Administrative Hearings:
 - 1. Is unconstitutional;
 - 2. Exceeds the statutory authority or jurisdiction of the Board of Trustees or the Office of Administrative Hearings;
 - 3. Results from an unlawful procedure;
 - 4. Is affected by any other error of law;
 - 5. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - 6. Is arbitrary or capricious.

When assessing a factual finding of an agency, the appropriate standard of review is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 84 (2001). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the reviewing court has no power to reject that conclusion.

Columbia Road Citizens' Ass'n v. Montgomery Cnty., 98 Md. App. 695, 698 (1994). Judicial review of an agency decision does not involve an independent decision on the evidence; instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569 577 (1994).

When considering whether an agency erred as a matter of law, the reviewing court decides the correctness of the agency's conclusions and may substitute the court's judgment for that of the agency. *People's Counsel for Baltimore Cnty. v. Prosser Co.*, 119 Md. App. 150, 168 (1998). The "substantial evidence test" also applies when there is a mixed question of law and fact. In other words, the agency has correctly stated the law and the fact finding is supported by the record, but the question is whether the agency has applied the law to the facts correctly. *Cowles v. Montgomery Cnty.*, 123 Md. App. 426, 433 (1998). Therefore, the order of an administrative agency must be upheld on review if it is not premised upon an error of law and if the agency's conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOCC, Inc.* 103 Md. App. 694, 711 (1995).

LAW

BCC §5-1-223 governs eligibility of a member for accidental disability benefits:

"Upon the application of a member in service or of the employer, any member who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, without willful negligence on the member's part, shall be retired by the Board of Trustees; provided that the Medical Board shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. No beneficiary entitled to an accidental disability retirement allowance shall receive any allowance on account of ordinary

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disability. For purposes of this section, a disability does not include a disability provided for under § 5-1-206 of this subtitle.”

CONCLUSION

The issue before this Board is whether there was an error of fact or of law, such that the Board could not support the findings of the ALJ. ALJ Baumgardner reviewed the case file and medical records and did not find any evidence of total disability or that the disability was the natural and proximate cause of the workplace injury. Before the Board, Ms. McNicholas was unable to articulate any errors, either of fact or law, that would cause this Board to question ALJ Baumgardner’s conclusions.

There was competent, material and substantial evidence in the record before the ALJ. The Board defers to the ALJ as fact finder and that he was able to assess and evaluate the evidence presented. There were no arguments before this Board that the ALJ erred in his factual findings.

The Board also finds that the ALJ decision was not based on an error of law. The Board will affirm the decision of the ALJ.

ORDER

THEREFORE, IT IS THIS 3rd day of December, 2024, by the Board of Appeals of Baltimore County

ORDERED, that the decisions of the Administrative Law Judge for Baltimore County dated June 17, 2024 and July 5 2024, denying the application of Elizabeth McNicholas for accidental disability retirement benefits are hereby **AFFIRMED**.

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Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

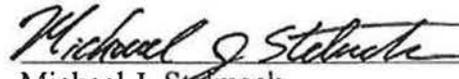
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Bryan T. Pennington, Panel Chair



Sharonne R. Bonardi



Michael J. Stelmack



Board of Appeals of Baltimore County

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December 3, 2024

Lisa J. Smith, Assistant County Attorney
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Elizabeth Judd McNicholas
6606 Accipiter Drive
New Market, Maryland 21774

RE: In the Matter of: *Elizabeth McNicholas (nee Judd)*
Case No.: CBA-25-001

Dear Ms. Smith and Ms. McNicholas:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sunny Cannington".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Maureen E. Murphy, Chief Administrative Law Judge
Kimberly Vazquez, Retirement Benefits Administrator/Retirement Office
Kevin D. Reed, Director/Office of Budget and Finance
Renee Coleman, Director/Office of Human Resources
James R. Benjamin, Jr., County Attorney/Office of Law