

STATE OF NEW YORK

COUNTY OF ALBANY

In the Matter of the General Municipal Law Section 207-a Application of

-and-

CITY OF ALBANY

OPINION AND RECOMMENDATION

PERB Case A2018-403

APPEARANCES:

For the City: Peachie L. Jones, Esq., Assistant Corporation Counsel
For Thomas J. Jordan , Esq.
Arbitrator: Gordon R. Mayo

The City of Albany (hereinafter City), and the Albany Permanent Firefighters Association, Local 2007, AFL-CIO (hereinafter APPFA) are parties to a collective bargaining agreement (hereinafter CBA) for the period January 1, 2010 – December 31, 2011, as modified by an Interest Arbitration Award for 2012-2013, a memorandum of agreement for 2014-2017, and a memorandum of agreement for 2018-2022. Pursuant to said CBA, I was duly designated by the NYS Public Employment Relations Board to hear a dispute between the parties as to the eligibility for General Municipal Law Section 207-a (hereinafter GML 207-a) benefits of Firefighter (hereinafter). On June 11, 2019, a

hearing was held at the offices of M-F Reporting in Albany, New York. The parties were afforded a full and fair opportunity to present their respective positions, including the right to present witnesses and introduce documentary and physical evidence, examine and cross-examine witnesses, and to present arguments in support of their respective positions. Both parties have filed post-hearing briefs.

ISSUE

Did [redacted] file a timely application for General Municipal Law Section 207-2 benefits under the City- APPFA collective bargaining agreement? If not, does it bar his claim for benefits pursuant to GML 207-a?

If that application can proceed, does [redacted] have an injury that resulted from the performance of his duties and that prevented him from performing his duties, so that he is entitled to benefits under GML 207-a and applicable case law?

If so, what is the appropriate remedy?

EXHIBITS

The following exhibits were introduced into evidence:

RELEVANT CONTRACTUAL PROVISIONS

General Municipal Law Section 207-a

Appendix E to CBA – General Municipal Law Section 207-2 Procedures

Section 14

The Arbitrator shall have the authority to decide, *de novo*, the claim of entitlement to GML 207-a benefits. The arbitrator shall have the authority to consider and decide all allegations and defenses made in regard to the GML 207-a claim, including but not limited to assertions regarding the timeliness of the GML 207-a claim. In the event of a dispute between the parties as to the nature of the proceeding, the arbitrator shall first decide whether the proceeding presents an issue of an applicant's initial entitlement to GML 207-a benefits or whether the proceeding presents an issue of termination of GML 207-a benefits. The burden of proceeding with evidence as to the nature of the issue(s) presented shall be on the member. In the event the Arbitrator decides that the matter presents an initial GML 207-a claim, the member shall have the burden of proof by preponderance of the evidence that he is entitled to receive the benefits set forth in GML 207-a with respect to an injury alleged to have occurred in the performance of his duties or to a sickness resulting from the performance of duties which necessitated medical or other lawful remedial treatment.

Joint Exhibits:

1. Arbitration Request
2. Demand for Arbitration Package 0/30/07
3. EAP
4. Evaluation Request Letter
5. Fitness for Duty IME
6. C3 from Workers Comp Claim
7. Issue

Union Exhibits

1. CS Job Description – Firefighters
2. Dr. Angelini's Letter
3. Dr. Sen's Letter
4. Angelini Resume

City Exhibits

1. DSM – 5
2. 207-a Application
3. Deleted
4. Deleted
5. Scheduling Printout
6. Copy of Facebook Photo

DISCUSSION

is a professional firefighter employed by the City, and has been so employed for the past 26 years. Assigned to the Delaware Avenue house, described his duties as interior and exterior fire attack, as well as providing emergency medical services. It is 's claim that he is entitled to GML 207-a benefits due to post traumatic stress disorder (Hereinafter PTSD). Although he had been symptomatic since the beginning of 2018, the first defined instance where PTSD disabled him was July 28, 2018.

first sought help with his symptoms on January 22, 2018, when he saw Dr, Raymond Angelini (hereinafter Angelini), a clinical psychologist with extensive experience in PTSD in law enforcement professions. In practice for 32 years, Angelini testified that his initial observation of indicated that "[I]t was very clear to me on initial evaluation that he was suffering from the symptoms of PTSD." (T., p 36) 's description of traumatic events he had witnessed and/or been involved in as triggers for PTSD led Angelini to testify that "[T]hey are completely consequentially related to his PTSD symptoms." (T., p.36) Angelini stated that a treatment plan included weekly sessions that emphasized certain coping strategies and medications which could help deal with anxiety and depressive disorders which were affecting his daily family life. Angelini's sessions with only lasted for six sessions, as that was the maximum number of visits that were covered by insurance. then reached out to Dr. Puspita Sen

(hereinafter Sen), a psychotherapist who was connected with the City's EAP program. [redacted] explained his symptoms to her, and she was providing similar advice to [redacted] to aid him in coping with his illness in order that he might continue on the job, which was his goal. At some point in June 2018 [redacted] returned to Dr. Angelini, inasmuch as his insurance covering those visits had been restored for another year.

[redacted] had at some point filed for Workers Compensation benefits based upon his condition, and was represented in that case by attorney Alex Dell (hereinafter Dell). In connection with that case, Angelini wrote to Dell on July 13, 2018 (Union Ex. 2), where he stated in pertinent part that "[redacted] manifests many signs and symptoms of Post-Traumatic Stress Disorder (F43.10), including flashbacks, nightmares, intrusive thoughts, irritability, and anxiety." On July 23, 2018, [redacted] provided a copy of Angelini's letter to both Deputy Chief Joseph Gregory (hereinafter Gregory) and Chief Warren Abriel (hereinafter Abriel) at fire headquarters. [redacted] testified as follows (at T., p.17):

Q. And what did you do with the letter?

A. I handed it to the Chief. They read it over and I asked if they had any questions. They said no. And I said, "Well, what do I do now?" And they said – They kind of shrugged their shoulders and said, Just keep us abreast of how everything is going, and I hope everything goes well."

Q. Did either of them suggest that you file a claim for 207-a at that point?

A. No.

Q. And were you still able to perform your duties at that point?

A. Yes.

On July 28, 2018, [redacted] suffered the first disabling injury that prevented him from performing his job duties. The following exchange describes the incident (T., at p.18):

Q. Now, I believe that you testified before that the first time your PTSD disabled you from performing your duties was July 28, 2018; do you recall testifying to that?

A. Yes.

Q. Describe for us what happened on that day?

A. We were on a routine EMS call. It came to a point where everything started getting loud, there was arguing going on and it was getting really loud, and I started shaking. I could feel it coming on. The ambulance was there. The call was wrapping up, so I went down to the truck and sat in the driver's seat and was trying to calm myself down, and got a little bit worse with the lights flashing in my face. I asked one guy to turn off the lights and I did some of my coping skills to try to talk myself down, which I did, and was able to complete my shift. At an appointment with Dr. Angelini on July 30, 2018, the following exchange occurred ((T., at p. 19):

Q. And can you sort of summarize what happened during that appointment with Dr. Angelini on July 30th?

A. We talked extensively about what had happened, and we both agreed that it's probably time that I stop working so that nobody gets hurt, myself or anybody else included, because I don't know if I can control this if something big happened, so we decided to stop work.

Following [redacted]'s session with Dr. Angelini, he reached out to Sen, inasmuch as Dr. Angelini could not provide him with an out-of-work excuse because of a third party relationship between the City and EAP. On August 1, 2018, Sen provided [redacted] with a clinical statement regarding his leave of absence request.

Sen states (Union Ex. 3) as follows:

This is to inform you that Mr. [redacted] gave me the permission to provide this clinical statement for requesting his leave of absence so that he can give himself the time to heal from his Post-Traumatic Stress Disorder-Chronic [F43.12]. He has his psychotherapy evaluation on March 27, 2018 and is receiving individual psychotherapy from me on a monthly basis. Right now, he is making an effort to continue developing effective coping skills to manage his emotional distress more efficiently while going through some significant personal challenges in his life. Based upon his self report it appears that currently he is having distressing traumatic triggers frequently and is not yet ready to resume his professional duties with his full professional capacity.

Based upon his engagement in his healing, it appears that he is personally invested to recover from his PTSD- acute while handling his uncomplicated bereavement [Z63.4]. He seems to be motivated to continue effective coping skills to bring emotional stability in his life as he feels compelled to adjust to a significant level of personal challenges. He informs that his main objective is to work on his long-term self-care plans and goals and he will appreciate your understanding for granting him a leave of absence from his duties for the time being so that he gain full recovery from his overwhelming traumatic distress. Clinically also it is highly recommended. . . .

On August 1, 2018, [redacted] picked up an application for GML 207-a Disability benefits from Chief Abriel's secretary, Mary Theresa Abriel (who, it should be noted, is also Chief Abriel's wife). When queried about the form, and how to fill

it out, Ms. Abriel could give no advice to [REDACTED]. With the assistance of his Workers Compensation attorney, Dell, the form was completed, and on August 10, 2018, the form was filed at headquarters with Ms. Abriel, given that no command officers were available. For some unexplained reason, Ms. Abriel would not provide [REDACTED] with a receipt recognizing the document's filing, so [REDACTED] wrote on his own copy that Ms. Abriel had received the document on August 10, 2010.

It is the City's claim that the application is untimely, insofar as [REDACTED] knew he had PTSD as early as January 2018, and did not file his application until August 10, 2018, well past the 60 day deadline for filing. It disregards the fact that although [REDACTED] was aware that he was suffering from an illness, he continued to work, while at the same time attempting to use coping skills learned from professionals in this field that would enable him to continue his employment. It was not until July 23, 2018 that he notified Abriel and Gregory of his condition, while still working. On July 28, 2018, he suffered, for the first time, a panic attack while on the job that for a period of time rendered him incapable of performing his duties. Within a week he received an out-of-work statement form Sen and obtained a GML 207-a form to file. Indeed, said form was filed on August 10, 2018, well within the 60 time frame designated in Appendix E, Section 4 of the CBA (Jt. Ex 1). Under the authority granted to me in Exhibit E, Section 14 (Jt. Ex. 1), which states in pertinent part that "[T]he Arbitrator shall have the authority to consider and decide all allegations and defenses made in

regard to the GML 207-a claim, including but not limited to assertions regarding timeliness of the GML 207-a claim”, I find that [redacted]’s claim to have been timely filed.

Some five months (January 17, 2019) after [redacted] submitted his application, newly appointed Fire Chief Gregory denied the application, citing timeliness, failure to file a written incident report, and failure to provide a complete application for 207-a benefits. Inasmuch as I have already found the application to have been filed timely, I must deal with the other two bases for denial. Appendix E requires the filing of a written incident report regarding the precipitating incident, and shall provide such written notice as soon as he or she concludes that the sickness is so caused, but in no event later than thirty (30) days from the time such sickness should have been discovered to have been the result of the performance of duty.

Such a requirement has been utilized by the City for approximately 35 years, and has been solely utilized for physical injuries suffered by fire personnel while on duty. It is my surmise that this is the first GML 207-a claim predicated on PTSD, which requires a different review process. Initially, [redacted] self-reported his condition in person to Chiefs Abriel and Gregory on July 23, 2018. It is undisputed that the City received Sen’s clinical appraisal on or about August 1, 2018, which gave them notice of [redacted]’s condition and diagnosis. Moreover, paragraph A of the GML 207-a application also sets forth the underlying triggers for his PTSD diagnosis. Finally, the City sent [redacted] for a psychological evaluation

by its own psychologist, Dr. David Kelley (hereinafter Kelley) on November 15, 2018 and January 2, 2019. Kelley wrote, in pertinent part, the following conclusions:

1. Mr. [REDACTED] meets the DSM-5 criteria for Post-Traumatic Stress Disorder.
2. Mr. [REDACTED]'s symptoms appear primarily related to and triggered by stimuli and experiences at his job with the Albany Fire Department (exposure to and thoughts of death; loud, chaotic settings; and situations of risk).
3. At this time, Mr. [REDACTED] does not appear able to return to full duty as a firefighter and paramedic. His continued symptoms of sleep disturbance, intrusive memories, and significant discomfort in the work environment would interfere with his performance of essential job functions.

The City had ample notification of [REDACTED]'s injury in a timely fashion, including written reports from the City's EAP psychotherapist and psychologist, and its first denial justification is without merit and is dismissed.

The second justification requires the applicant to describe in detail (including date and place) the incidents which caused the injury in question. Once again, this provision is designed for physical injuries, not mental injuries the subject suffered during the course of employment over 26 years of service, and the cumulative effect those incidents had on his mental well-being. Dr. Kelley's report makes mention of [REDACTED]'s triggers in his report that confirms his PTSD condition. It should be also noted that the City gave [REDACTED] zero guidance in how to file such a claim, initially beginning with the refusal of Abriel's secretary to even provide

with a receipt of service. In an attempt to amplify upon his original GML 207-a application, a second amended application was filed with Mayor Kathleen Sheehan (hereinafter Sheehan) on February 15, 2019, following Gregory's denial of the August 10, 2018 application (Jt. Ex. 2). Sheehan has never responded to this appeal, even though Appendix E, Section 12 requires such a decision be rendered within thirty days of the appeal. Despite this omission, I find that [redacted] has complied with the filing requirements set forth in Appendix E, and there appears to be ample evidence that he is disabled as the same is defined in GML 207-a of the General Municipal Law.

FINDINGS AND ORDER

In light of my findings *supra*, it is my finding that Firefighter [redacted]'s application for General Municipal Law Section 207-a benefits was timely. I further find that [redacted] has an injury that resulted from the performance of his duties, and prevented him from performing his duties under General Municipal Law Section 207-a and applicable case law. As a remedy, [redacted] shall be credited with sick leave charged from August 1, 2018 to present. Retroactive to August 1, 2018, [redacted] shall be granted GML 207-a benefits and shall be placed upon GML 207-a leave until such time as his disability ceases or he retires.

SO ORDERED.

October 15, 2019

GORDON R. MAYO, Arbitrator

STATE OF NEW YORK
COUNTY OF RENSSELAER ss.

I GORDON R. MAYO, do hereby affirm on my oath as Arbitrator that I am the individual described herein and who executed the subject Award on October 15, 2019

GORDON R. MAYO