THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
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EDWARD B. MCGRATH
CHIEF ADMINISTRATIVE MAGISTRATE

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August 11, 2017

William G. Rehrey, Esquire
11 Beacon Street, Suite 321
Boston, MA 02108

Christopher J. Collins, Esquire
Law Offices of Michael Sacco
P.O. Box 479
Southampton, MA 01073-0479

RE: *Elizabeth Bell v. Franklin Regional Retirement Board,* CR-15-600

Dear Sir or Madam:

Enclosed is a final Decision in the above-captioned appeal. Massachusetts General Laws, Chapter 32, Section 16(4) provides that both parties must comply with the decision unless: (1) either party objects in writing to the Contributory Retirement Appeal Board, or (2) the Contributory Retirement Appeal Board orders that it will review the decision on its own.

If you object, **within fifteen (15) days of this decision** you must mail specific objections to the Decision to Catherine E. Sullivan, Assistant Attorney General, Chair, Contributory Retirement Appeal Board, Office of Attorney General Maura Healey, One Ashburton Place, 20th Floor, Boston, MA 02108. Copies of the objections must be sent to the Division of Administrative Law Appeals, One Congress Street, 11th Floor, Boston, MA 02114 and to the other party involved in this case.

Within forty (40) days of this decision, the objecting party must forward three copies of the exhibits to the Contributory Retirement Appeal Board at the same address as above and one set to the other party. Do not send a set to the Division of Administrative Law Appeals. The objecting party must number the exhibits the same as they were numbered at the hearing. The Contributory Retirement Appeal Board will not hear any appeal until exhibits have been received.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Edward B. McGrath, jr

Edward B. McGrath
Chief Administrative Magistrate

EBM/jb
cc: Catherine E. Sullivan

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Elizabeth Bell,
Petitioner

v.

Docket No. CR-15-600
Dated: August 11, 2017

Franklin Regional Retirement Board,
Respondent

Appearance for Petitioner:

William G. Rehrey, Esquire
11 Beacon Street, Suite 321
Boston, MA 02108

Appearance for Respondent:

Christopher J. Collins, Esquire
Law Offices of Michael Sacco
P.O. Box 479
Southampton, MA 01073-0479

Administrative Magistrate:

Judithann Burke

Summary of Decision

The Petitioner has met her burden of proving that she is entitled to Section 9 accidental death benefits by virtue of her late husband's retirement in 1994 due to coronary artery disease and his death in 2013 due to congestive heart failure.

DECISION

The Petitioner, Elizabeth Bell, is appealing from the October 30, 2015 decision of the Respondent, Franklin Regional Retirement Board (FRRB) denying her application for

Section 9 accidental death benefits. (Exhibit 1.) The appeal was timely filed on November 5, 2015. (Exhibit 2.) A hearing was scheduled for November 28, 2016 in Room 305 at 436 Dwight Street, Springfield, MA. On that date, I conferred with both counsel and it was mutually decided that the matter would be submitted on the documents. No testimony was taken. The agreement was digitally recorded.

The parties filed pre-hearing and subsequent submissions. (Attachments A and C-Petitioner; Attachments B and D-Respondent.) Included in Attachment B are ten (10) Stipulations. The last of the submissions was received on February 22, 2017 thereby closing the record.

The following is the list of exhibits proffered by each party in the case per Attachments A and B:

Exhibit No.	**Document Description**
1	FRRB's denial letter dated October 30, 2015
2	Petitioner's appeal letter received on November 5, 2015
3	January 11, 2015 application for accidental death benefits
4	April 24, 2013 death certificate of David Bell
5	January 2, 2015 letter to Petitioner from Giovanni Campanile, M.D.
6	Undated narrative report of Larry Weinrauch, M.D.
7	September 11, 2015 letter from FRRB to Bay State Medical Cardiology
8	October 1, 2015 report of Gregory Giugliamo, M.D.
9	David Bell's February 24, 1994 application for accidental disability retirement benefits
10	Physician's Statement
11	March 28, 1994 regional medical panel certificate
12	Franklin Medical Center records from August 31, 1993-December 6, 1993
13	Bay State Medical Center records from September 2-10, 1993
14	Connecticut River Internists medical records from September 15, 1993 to November 12, 1993
15	Hitchcock Clinic medical records from October 15, 1993 to January 6, 1994

16 Mountainside Hospital medical records from April 23, 2010 to December 12, 2010
17 Saint Barnabas Medical Center records from December 20, 2010 to December 2, 2011
18 Montclair Cardiology Group records dated December 21, 2010
19 Medical records from Smita Shah, M.D. from September 19, 2011 to May 21, 2012
20 Doylestown Hospital records from March 12, 2012 to April 3, 2013
21 Medical records from Andrew Krick, M.D. from April 2, 2012 to September 18, 2012
22 Medical records from James Guarino, M.D. from March 12, 2012 to January 31, 2013
23 Otolaryngology Plastic Surgery Associates records dated April 19 and May 23, 2012
24 Medical records from Les Szekey, M.D. from May 21, 2012 to March 11, 2013
25 Morristown Medical Center records from March 13, 2013 to March 20, 2013
26 Selection Rehabilitation records from March 21, 2013 to April 18, 2013
27 Medical record from Melchiore Vernace, M.D. dated April 5, 2013
28 Affidavit of Assistant Director Susan Bobe dated November 17, 2016
29 Medical records from Dr. Campanile from March 4, 2008 to May 23, 2011
30 Cardiology Center of New Jersey records from September 7, 2011 to September 24, 2012
31 Briarleaf Nursing Home records from March 20, 2013 to April 23, 2013
32 DALA Decision in *David R. Bell v. Franklin Retirement Board,* CR-94-861 dated September 12, 1995
33 FRB letter to David Bell dated November 6, 1995
34 FRRB letter to Petitioner dated April 26, 2013
35 FRRB letter to Petitioner dated April 30, 2013
36 Petitioner letter to FRRB dated August 22, 2013
37 FRRB letter to Petitioner dated November 14, 2013
38 Petitioner letter to FRRB dated November 19, 2014
39 FRRB letter to Petitioner dated December 4, 2014
40 Petitioner letter to FRRB with three (3) Attachments dated January 13, 2015
41 FRRB letter to Petitioner dated March 6, 2015
42 June 25, 2015 regional medical panel certificate
43 August 5, 2015 letter from Petitioner's counsel to FRRB
44 October 14, 2015 letter from Petitioner's counsel to Dr. G. Campanile
45 October 6, 2015 letter from Petitioner's counsel to FRRB with Attachment

46 October 11, 2016 letter from Petitioner's counsel to Dr. G. Campanile
47 November 2, 2016 opinion letter from Dr. Campanile
48 Undated Curriculum Vitae of Dr. Campanile

FINDINGS OF FACT

Based upon the documentary evidence submitted by the parties, I hereby render the following Findings of Fact:

1. The Petitioner, Elizabeth Bell, is the surviving spouse of David Bell who died on April 23, 2013. His death certificate noted "congestive heart failure" as the immediate cause of death due to or as a consequence of "diabetes mellitus." The Petitioner was married to and living with David Bell at the time of his death. (Exhibits 3 & 4 & Stipulation.)

2. David Bell was employed as the Town of Deerfield Chief of Police from October 1, 1980 to August 22, 1994 when he was retired on accidental disability pursuant to G.L. c. 32, §§ 7 & 94, the "Heart Law." His diagnosis was "coronary artery disease." (Exhibits 9, 11, 32 & 33 & Stipulation.)

3. On December 21, 2010, Alan Saroff, M.D. treated David Bell and noted that his coronary heart disease was a-symptomatic. (Exhibit 18.)

4. Dr. Giovanni Campanile, David Bell's treating cardiologist, performed a cardiac catheterization on David Bell on December 2, 2011 at Clara Mass Medical Center in New Jersey. This revealed ischemic cardiomyopathy with severe hypokinesia of the posterior basal segment and a left ventricular ejection fraction of 40% as well as total occlusion of his left anterior descending artery, his left circumflex complex artery, and his right coronary artery. (Exhibit 47.)

5. David Bell was admitted to Doylestown Hospital in Pennsylvania for acute decompensated congestive heart failure on March 12, 2012. He was found to be in atrial fibrillation with significant shortness of breath and rapid ventricular rate. He was treated there by James C. Gurino, M.D. David Bell was complaining of significant shortness of breath at that time. He was discharged on March 16, 2012 with the following discharge diagnoses:

1. Acute chronic decompensated diastolic congestive heart failure.
2. Paroxsymal atrial fibrillation, status post cardioversion this admission
3. Ejection fraction of 45%
4. Left pleural effusion
5. Coronary artery disease, status post coronary bypass graft surgery in 1994 with left internal mammary artery to left anterior descending, saphenous vein graft to obtuse marginal one and occluded saphenous vein graft to right coronary artery.
6. Catheterization on December 2, 2011 at Clara Mass Medical Center revealed occlusion of all native vessels with patient left internal mammary artery to the left anterior descending to obtuse marginal one and cystectomy occluded saphenous vein graft to right coronary artery.
7. Hypertension
8. Hyperlipidemia
9. Diabetes mellitus type 2
10. Chronic anti-coagulation
11. Acute and chronic renal insufficiency
12. Obstructive sleep apnea, on continuous positive airway pressure
13. Interstitial lung disease/chronic obstructive pulmonary disease, followed by Dr. Kahn
14. Cholecystectomy

(Exhibit 20.)

6. David Bell was seen again at the Doylestown Hospital on November 21, 2012. His cardiologists were listed as "James C. Guarino, M.D." & "cardiologist in New Jersey (Dr. Campanile)". It was noted in the Admission record that David Bell's then-primary care physician, Dr. Andrew Krick, had indicated that his patient had a history of coronary

artery disease. Dr. Guarino noted further that Mr. Bell had undergone coronary by-pass surgery in late 2011 that revealed occlusion of all native vessels with patent LIMA to LAD, patent SVG to obtuse marginal 1 and occluded SVG graft to RCA, after which he was recommended to medical therapy. It was also noted that David Bell denied having chest pains during this admission, but that he had been non-compliant with his Lasix medication and he was using nitroglycerin daily with some improvement in his breathing. (*Id.*)

7. David Bell was discharged from the Doylestown Hospital on December 5, 2012 with the top fifteen (15) discharge diagnoses:

1. Acute on chronic systolic/diastolic congestive heart failure
2. Hypoxia, on home O2 as needed
3. Interstitial lung disease/pulmonary fibrosis
4. Obstructive sleep apnea, on CPAP
5. Diabetes mellitus, type 2
6. Chronic kidney disease, stage III
7. Hyperkalemia
8. Ischemic cardiomyopathy, ejection fraction 40-45%
9. Mild mitral regurgitation, mild-to-moderate tricuspid regurgitation
10. Paroxysmal atrial fibrillation, remains in normal sinus rhythm
11. Chronic Coumadin anticoagulation, regulated by DCA
12. Coronary artery disease, status post coronary artery by-pass graft surgery in 1994
13. Catheterization in December of 2011 with occlusion of all native vessels and patent left internal mammary artery to left anterior descending, patent saphenous vein graft to obtuse marginal 1, and occluded saphenous vein graft to right coronary artery.
14. History of left anterior descending stent
15. History of right carotid stent 2005
16. Obesity
17. Hypertension
18. Hyperlipidemia
19. Lucent lesion in the right scapula with slightly increased uptake on bone scan

(*Id.*)

8. David Bell was admitted to Doylestown Hospital yet again on December 30, 2012 for worsening shortness of breath and chest pain. A cardiac catheterization revealed that his vessels were severely blocked with triple-vessel coronary disease and an overall stable appearance of his coronary disease. With his worsening hypoxia, he was seen in consultation with the Pulmonary Department and was felt to have worsening of his interstitial lung disease and idiopathic pulmonary fibrosis. He was also treated for some mild heart failure. David Bell was discharged home on January 14, 2013 with diagnoses of nonspecific interstitial pneumonitis, idiopathic pulmonary fibrosis, severe, history of amiodarone use with interstitial changes predating the initiation of amiodarone, exertional hypoxemia, and paroxysmal atrial fibrillation. (Exhibits 20 & 47.)

9. David Bell informed his health care providers that he had been taking nitroglycerin when he was seen on January 2, 2013 by Doctors Andrew Krick and Les Szekely at the Doylestown Hospital. It was noted that his medical history was notable for coronary artery disease with a prior admission due to congestive heart failure. He informed his health care providers that he had been taking the nitroglycerin twice daily for the past several days. (*Id.*)

10. On January 31, 2013, David Bell treated with James Guarino, M.D. and complained of shortness of breath. Dr. Guarino suspected that the shortness of breath was primarily pulmonary in nature. The doctor noted that, while the cardiac catheterization in January 2013 had revealed some coronary artery disease, it was not enough to explain his shortness of breath. (Exhibit 22.)

11. On March 6, 2013, a chest CT scan revealed advanced interstitial lung disease with traction bronshiectasis, honeycombing, alveolar changes and air trapping, a superimposed new area of airspace disease in the posterior segment of the right upper lobe, possibly superimposed bronchopneumonia and gas in small left pleural effusion. (Exhibit 20.)

12. A March 6, 2013 chest CT scan revealed advanced interstitial lung disease with traction bronchitis, honeycombing, alveolar changes and air trapping. (*Id.*)

13. On March 11, 2013, David Bell was treated again by Les Szekely, M.D. The doctor noted that he was rapidly declining from a pulmonary perspective and end of life issues were discussed. Mr. Bell denied having any chest pain or tightness during that visit. (Exhibit 24.)

14. On March 13, 2013, David Bell was admitted to Morristown Memorial Hospital in New Jersey for increasing shortness of breath. It was determined that during this hospitalization that he experienced a non-ST segment elevated myocardial infarction while hospitalized. He underwent a cardiac catheterization that revealed ischemic cardiomyopathy with an ejection fraction of 45%. Mr. Bell was also found to have triple vessel coronary disease with open bypass graft to the LAD, open bypass graft to the obtuse marginal branch and occluded bypass graft to the right coronary artery. It was noted that his cardiac condition was very severe in that he experienced the myocardial infarction during the hospitalization. He was also assessed with interstitial lung disease and possible pneumonia. No acute interventions were performed. David Bell was moved into a nursing home following this hospital admission. (Exhibits 25 & 47.)

15. On April 3, 2013, David bell underwent a CT scan of his chest that showed overall slight increase in superimposed pneumonic process in the right upper lobe posteriorly and bibasilar airspace disease with slight increase in bilateral pleural effusions, superimposed on severe interstitial fibrosis, persistent mildly prominent and slightly increased in size lymph nodes consistent with inflammatory process. (Exhibit 20.)

16. On April 5, 2013, Melchiore Vernace, M.D. treated David Bell and assessed him with established chronic kidney disease with nephrotic range proteinuria, presumably related to diabetic glomerulosclerosis given the presence of normal sized kidneys and the duration of diabetes with other microvascular complications and end stage COPD with advanced interstitial lung disease. Dr. Vernace noted that Mr. Bell had suffered from diabetes for quite some time and that he had not experienced any recent chest pains. The doctor noted that he would try to finesse some of Mr. Bell's chronic kidney disease related issues with the hope of improving his quality of life, but that he was not sure if Mr. Bell and his wife "understood the big picture." (Exhibit 27.)

17. David Bell passed away on April 23, 2013. The cause of death was listed as "congestive heart failure due to or as a consequence of diabetes mellitus." (Exhibits 4 & 40.)

18. David Bell's diabetes mellitus was noted as the disease that "initiated the events that resulted in death." (*Id.* & Exhibits 24-27.)

19. On January 11, 2015, the Petitioner filed her application for accidental death benefits pursuant to G.L. c. 32, § 9 and provided a medical opinion from Giovanni Campanile, M.D. (Exhibits 3, 5, 40 & Stipulation.)

20. In Dr. Campanile's letter of January 2, 2015, the doctor indicated that David Bell had been under his care for the better part of the decade prior to his death. Dr. Campanile indicated that Mr. Bell had "died of congestive heart failure and had significant heart disease which contributed to this unfortunate outcome." Dr. Campanile reported that David Bell had a history of significant obstructive coronary artery disease and had coronary artery bypass surgery as well as coronary stent implantation to the left anterior descending artery. Dr. Campanile indicated further that Mr. Bell's atherosclerosis also involved his carotid artery and that he was post-stenting of the right carotid artery. Dr. Campanile reported that David Bell's coronary artery disease resulted in ischemic cardiomyopathy with episodes of congestive heart failure and atrial fibrillation. He added that Mr. Bell's chronic pedal edema was most likely secondary to his biventricular heart failure. Dr. Campanile concluded that the patient's immediate cause of death was congestive heart failure and that his coronary artery disease was the natural and proximate cause of his death. (Exhibit 40.)

21. On April 20, 2015, the FRRB reviewed the Petitioner's request for accidental death benefits along with all of the medical and non-medical information and and voted to request that the Public Employee Retirement Administration Commission (PERAC) appoint a single-physician medical panel to conduct a record review and offer an opinion

regarding the causal relationship, if any, between David Bell's Sections 7 & 94 retirement and his death. (Exhibit 6 & Stipulation.)

22. PERAC appointed Larry Weinrauch, M.D. to conduct the record review. The FRRB received his report on June 27, 2015. (*Id.*)

23. In his June 2015 report, Dr. Weinrauch noted that David Bell had suffered from a myriad of medical conditions prior to his death and that "he died as a result of the prolonged association of cardiac and pulmonary disease."

> In this case Mr. Bell died as a result of the prolonged association of cardiac and pulmonary disease. It was initially felt in 1994 by the medical panel that the facts of the case did not support accidental disability as the scientific evidence outweighed the presumption of the Heart Law. Clearly the progressive nature of his atherosclerotic disease (to carotid, coronaries and peripheral vasculature) due to poorly controlled diabetes (with retinopathy, neuropathy, nephropathy), hypertension, and obesity referred to initially by the medical panel are consistent with this analysis. I must conclude that there is no evidence to overturn the conclusion of Dr. Campanile that Mr. Bell's death was cardiovascular in nature.

(Exhibits 6 & 42.)

24. After reviewing Dr. Weinrauch's opinion, the FBBR, on its own initiative, voted to obtain an opinion from a cardiologist on the question of causation. As such, in a letter dated September 11, 2015, the FRRB requested that the Bay State Medical Cardiology Department (Bay State) assign a cardiologist at their facility to conduct a record review and offer an opinion. Bay State appointed Gregory Giugliamo, M.D. to conduct the record review. (Exhibits 7 & 8 & Stipulation.)

25. Dr. Giugliamo issued his opinion on October 1, 2015. He noted that David Bell died "due to progressive hypoxic respiratory failure from end stage interstitial lung

disease…and not atherosclerotic coronary artery disease." Dr. Giugliamo noted that during David Bell's last hospital admission in March 2013 the focus was related to his end-stage interstitial disease (hypoxic respiratory failure) and that he was discharged to a nursing home where his condition continued to deteriorate. The doctor noted that David Bell's cardiac function had been stable for "many months" and that his steady decline in his last year was due to his worsening lung disease. Dr. Giugliamo indicated that, but for his severe, worsening lung disease, Mr. Bell would have survived longer despite his multiple medical problems. (Exhibit 8 & Stipulation.)

26. On October 27, 2015, the FRRB again reviewed the Petitioner's request for accidental death benefits along with the medical and non-medical evidence provided including the opinions of Drs. Campanile, Weinrauch and Giugliamo and voted to deny the Petitioner's Section 9 application. (Exhibit 1 & Stipulation.)

27. The Petitioner filed a timely appeal on November 5, 2015. (Exhibit 2.)

28. In a letter dated November 2, 2016, Dr. Campanile noted that during the admission to Morristown Medical Center in March 2013, David Bell's cardiac condition was very severe and advanced. Dr. Campanile opined that it would be impossible for any physician to discern to what degree his shortness of breath was due to heart causes versus lung causes, but that he died because of his severe underlying cardiac condition which was exacerbated by his pulmonary fibrosis. (Exhibit 47.)

CONCLUSION

After a careful review of all of the medical evidence proffered in this case I have concluded that the Petitioner is entitled to prevail in this appeal. She has submitted

"proper proof" that her husband's death was a result of the condition for which he was retired in 1994. G.L. c. 32, § 9(1) provides:

> The provisions of this section shall apply although such member had previously been retired for accidental disability if the board finds that such death was the natural and proximate result of the injury or hazard on account of which such member was retired.

David Bell was retired in 1994 due to the progressive nature of his artherosclerotic coronary artery disease. He underwent numerous catheterizations as well as stenting and bypass surgery in the years following his retirement. He was hospitalized several times in the years immediately prior to his death with acute congestive heart failure, ischemic cardiomyopathy and atrial fibrillation. There is little support in the record for the positions of the FRRB and Dr. Giugliamo that David Bell's underlying coronary artery disease was dormant and/or asymptomatic during the final months and weeks of his life. In fact, he suffered a myocardial infarction during the March 2013 hospitalization a month prior to his death.

Although Mr. Bell certainly had a complex medical history which included the symptomatic, severe pulmonary disease, both his treating cardiologist, Dr. Campanile, and the PERAC appointee, Dr. Weinrauch, were convinced that his immediate cause of death, as set forth on the Death Certificate, was congestive heart failure and that his advanced coronary artery disease was the natural and proximate cause of his death. Their reports are supported by the evidence and constitute reliable and competent evidence. That the FRRB was not satisfied with Dr. Weinrauch's findings and procured a doctor form the Bay State Medical Group to render a second opinion is not controlling. Dr.

Giugliamo did not treat David Bell over a period of years like Dr. Campanile did. Dr. Weinrauch was the medical panel member. Both doctors were keenly aware of the progressive nature of Mr. Bell's coronary artery disease. I have weighed their opinions heavily.

In conclusion, based on the foregoing, the Petitioner has sustained her burden of proving that her husband's death on April 23, 2013 was the natural and proximate result of his disability from work as the Deerfield Police Chief, his coronary artery disease. The decision of the FRRB denying her application for accidental death benefits is reversed. This matter is remanded to the FRRB for the purpose of granting the Petitioner Section 9 benefits.

So ordered.

Division of Administrative Law Appeals,
BY:

Judithann Burke

Judithann Burke,
Administrative Magistrate

DATED: August 11, 2017