

**BEFORE THE  
MERIT SYSTEM PROTECTION BOARD  
FOR  
MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF**

██████████,

**APPELLANT,**

**AND**

**MONTGOMERY COUNTY  
GOVERNMENT,**

**EMPLOYER**

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**CASE NO. 22-01**

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**FINAL DECISION**

██████████ (Appellant), the widow of Police Officer ██████████, filed the above captioned appeal with the Merit System Protection Board (Board or MSPB) on July 12, 2021, challenging the Chief Administrative Officer's (CAO's) determination that her application for survivor service-connected ("line of duty") death benefits under the County Employees' Retirement System (ERS) law should be denied.<sup>1</sup> Appellant seeks service-connected death benefits based on the tragic October 14, 2019, suicide of Officer ██████████, which she contends was caused by a work-related injury he suffered in 2009.

On August 25, 2021, the County filed a response to the appeal. The County's response addressed the issues raised in the appeal and included six attached exhibits. Appellant filed a reply to the County's submission on September 15, 2021 and included 17 exhibits. The Board has carefully considered and decided the appeal.

**FINDINGS OF FACT**

Officer ██████████ received a serious injury as a result of work-related training in 2009. Appellant Exhibit (AX) 8; AX 12; AX 15, p. 35.<sup>2</sup> After extensive Workers' Compensation

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<sup>1</sup> Section 33-56 of the Montgomery County Code vests the CAO with the authority to issue interpretations of the County's retirement statute.

<sup>2</sup> Seventeen Appellant Exhibits were admitted into the record. The Appellant Exhibits are as follows:

AX 1 - Workers' Compensation Committee (WCC) Employee's Claim, 4/14/10

AX 2 - WCC form Contesting Issues, 4/22/10

AX 3 - Transcript of Maryland Workers' Compensation Commission hearing, 12/2/10

AX 4 - Montgomery County Dept. of Police Investigative Report, 8/4/09

litigation, the County does not now dispute that Officer ██████'s 2009 injury and illness were a result of work-related activity. As counsel for the County conceded during that litigation: "The ship sailed as far as the causal relationship of Mr. ██████'s illness. It was determined that somehow during that training the bacteria invaded his body and made him very ill." *Workers' Compensation Commission Hearing Transcript*, July 30, 2014, AX 11, p. 39.

In that 2009 training incident Officer ██████ contracted a MRSA infection and suffered necrotizing fasciitis, septic shock, organ failure, and cardiac arrest. He was hospitalized for two months and underwent multiple surgical procedures. After a difficult recovery, Officer ██████ was eventually able to return to duty. County Exhibit (CX) 5.<sup>3</sup> Regrettably, Officer ██████ died by suicide in his patrol car on October 14, 2019. CX 2.

Five years earlier, on August 8, 2014, the Workers Compensation Commission (WCC) had issued an award of compensation to Officer ██████ for a permanent partial disability and disfigurement of 35% of the right shoulder, both feet (peripheral edema), hernia, cardiomyopathy, low back, sleep apnea, and disfigurement to the head, neck, abdomen, under right arm/axillary region, and buttocks. CX 1. In 2015 the Circuit Court upheld the 35% permanent partial disability award but reversed the disfigurement award. AX 14. The WCC specifically found no urologic impairment, and neither the WCC nor the Court issued an award for psychological injuries.

When Appellant filed for a service-connected death benefit the CAO was required to make a determination whether Officer ██████'s death was service-related using the criteria to determine a service-connected disability. Montgomery County Code, §33-46, §33-56(a); *See* MSPB Case No. 11-03 (2010). The CAO asked the County Disability Review Panel (DRP) to review Officer ██████'s medical records and provide him with information and recommendations to assist his

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- AX 5 - Dr. G ██████'s IME Report, 3/11/10
  - AX 6 - WCC Award of Compensation, 12/15/10
  - AX 7 - WCC Request for Modification by Claimant's Attorney, 12/15/10
  - AX 8 - WCC Order, 12/9/11
  - AX 9 - Montgomery County's Petition for Judicial Review, 12/29/11
  - AX 10 - Circuit Court Order of Remand, 4/22/13
  - AX 11 - Transcript of WCC hearing, 7/30/14
  - AX 12 - WCC Award of Compensation, 8/8/14
  - AX 13 - Montgomery County's Pretrial Statement, 1/28/15
  - AX 14 - Circuit Court Order, 6/26/15
  - AX 15 - Transcript of Circuit Court hearing, 6/17/15
  - AX 16 - Corporal ██████ Memorandum, 8/1/11
  - AX 17 - Letter from Dr. ██████ ██████, 1/20/20

<sup>3</sup>Six County Exhibits were admitted into the record. The County Exhibits are as follows:

- CX 1 - Workers' Compensation Commission Award of Compensation, 8/8/14
- CX 2 - CAO's Decision Letter, 7/1/21
- CX 3 - Function Code 1151, Line-of-Duty Deaths, effective date 7/15/98
- CX 4 - Police Officer III Classification
- CX 5 - Report of Disability Review Panel (DRP), 7/24/20
- CX 6 - Officer ██████'s Combined Psychological Records

decision making. CX 5. The DRP consisted of four medical doctors, one of whom (Dr. ██████████ H██████████) is a psychiatrist.<sup>4</sup>

In its July 24, 2020, report the DRP found that Officer ██████████'s psychiatric/psychological treatment history was "sporadic" and that there was no documentation of evaluation or treatment for depression during the July 21, 2013 to March 10, 2019, time frame. CX 5, pp. 2-3. The DRP report Part F, Diagnoses/Treatment/Prognosis, does note "History of depression" and "History of marital problems pre-existing 2009 injury." CX 5, p. 57.

The DRP determined that because there was insufficient medical documentation to establish that Officer ██████████'s death by suicide was causally related to the injury at work in 2009, it could not support a finding that he was eligible for service or non-service disability retirement. CX 5, pp. 3-4. The DRP explained that the "medical records presented are insufficient to establish a nexus between the injury of 2009 and the self-inflicted gunshot wound in 2019." The DRP found:

After reviewing the medical record in its entirety, the Panel is unable to determine whether or not Mr. ██████████'s tragic suicide on 10/14/19 is causally related to the injury at work on 6/18/09. Mr. ██████████ was working full duty on 10/14/19 and had been working full duty since 2011. . . . The medical records presented are insufficient to establish a nexus between the injury of 2009 and the self-inflicted gunshot wound in 2019. While the Panel acknowledges the medical diagnoses detailed above, there is insufficient information to causally link the remote injury in 2009 to the tragic suicide ten years later in 2019. Due to insufficient information, the Panel opines that the Applicant had not met the Montgomery County Code requirements detailed below. Thus, the member *was not eligible for service or non-service-connected disability retirement*, and therefore, *denial of service and non-service-connected disability retirement* is recommended by the Panel.

CX 5, pp. 3-4 (emphasis in original).

The DRP concluded that the medical record was insufficient to meet the eligibility requirements for service-connected death benefits and recommended that the request be denied. CX 5, pp. 4, 7.

On July 1, 2021, the CAO sent a letter to Appellant explaining why he did not consider Officer ██████████'s death to be service-related under Montgomery County Code §33-46 so as to entitle Appellant to service-connected death benefits. CX 2.

The Board carefully reviewed the medical documentation and summaries in Part E of the DRP report, CX 5, pp. 11-56, and the psychological records. CX 6. The items most pertinent to our assessment of causality between the 2009 injury and the 2019 death were the following.

As part of the hiring process for employment as a police officer with the Montgomery County Police Department Officer ██████████ underwent physical and psychological evaluation. The

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<sup>4</sup> In 2009 the County Council made various amendments to the disability retirement law. One of the amendments modified the qualifications and selection procedures for members of the DRP to require that the CAO appoint 4 impartial, unbiased medical doctors, including specialists, from a list provided by one or more impartial medical organizations of doctors. Montgomery County Code, §33-43(c).

November 3, 2005, Pre-placement medical history recorded that Officer ██████'s "height was 73 inches [6' 1"] and weight 291 pounds (BMI 38.4, heavily overweight)." A November 2, 2005, Psychological Screening of Officer ██████ found "no serious psychopathology, personality disorder, current substance abuse, or vulnerability to stress-related disability." CX 5, p. 11.

From June 18, 2009, after his injury, to December 13, 2010, there were various medical reports related to the 2009 injury and treatment. Those medical reports contained no discussion of psychological issues. CX 5, pp. 11-25.

A March 11, 2010, Independent Medical Evaluation (IME) (Dr. ██████ G█████) indicated that the 2009 injury and "secondary problems involving the brain, legs, and sacral decubitus region" were "due to exposure that occurred at work." AX 5, p. 2; CX 5, p. 15. The IME made no mention of psychological issues.

During a September 6, 2011, Stress Management Team counseling session with ██████ W█████, Ph.D., that Officer ██████ and his wife attended, Officer ██████'s wife "said that she is probably 'mourning' the loss of a much more engaged and active husband" and that "she misses the way things were before husband became ill" as a result of the 2009 injury. CX 6, p. 29. During the session, Officer ██████ complained that his wife "basically does not understand what he is going through." CX 6, p. 30. Dr. W█████ noted that Officer ██████ reported concerns about his marriage, depression, and sleep difficulties. CX 5, pp. 25-26; CX 6, pp. 29-30. Officer ██████ also acknowledged that he had been struggling with his weight before the 2009 injury. CX 6, p. 29.

During a September 20, 2011, individual therapy session with Dr. W█████, Officer ██████ related that he was becoming more active and feeling less depressed, and that his depression was 3 or 4 on a scale of 1-10 with 10 being the most severe. CX 5, p. 26; CX 6, p. 31.

From December 15, 2012 to July 19, 2013, there were various medical reports for treatment and tests. None of them made mention of Officer ██████'s possible psychological issues. CX 5, p. 26.

In a July 20, 2013, psychiatric evaluation, psychiatrist Dr. ██████ S█████ found that "the proximate cause of [Officer ██████'s] Major Depressive Disorder and being sterile was the incident on June 20, 2009." CX 6, p. 16. Dr. S█████ noted that there was no indication of suicidal ideations. CX 5, p. 31; CX 6, p. 10. The DRP specifically took into account Dr. S█████'s evaluation:

On 7/20/13 Dr. ██████ S█████ performed a Psychiatry evaluation. Dr. S█████ diagnosed Mr. ██████ with Major Depression related to the injury at work on 6/18/09. At the time of the evaluation, Dr. S█████ noted that Mr. ██████ was not suicidal.

CX 5, p.3. The DRP further observed that between July 21, 2013, and March 10, 2019, there was no medical "documentation of evaluation and/or treatment for depression." CX 5, p. 3. Our review of the record, as discussed below, confirms the DRP's statement.

A July 25, 2013, Family Medicine IME (Dr. ██████ L█████) makes no mention of psychological issues. CX 5, p. 38. An August 8, 2013 IME (G█████) also makes no mention of

psychological issues and suggests that Officer ██████'s sterility and impotence were not related to the 2009 injury. CX 5, p. 41.

A June 18, 2014, Occupational Medicine IME (Dr. ██████ K███) notes the July 20, 2013, S█████ psychiatric evaluation, but makes no finding of impairment regarding Officer ██████'s mental health. The IME further says that the infertility and low testosterone conditions were not related to the 2009 injury. CX 5, pp. 42-47. A July 28, 2014, follow up Occupational Medicine IME Addendum (K███) contains no finding of impairment due to mental health issues. CX 5, pp. 48-49.

March 11, 2019, Stress Management Team client information and notes by ██████ S███, Ph.D., say that Officer ██████ and his wife related that they have had "various problems that collectively led to a decline in the quality of their marital relationship" over the previous 10 years and that the "relationship appreciably declined" after the 2009 injury. CX 6, p. 24. During the session Officer ██████ and his wife told Dr. S███ that their "marital problems surfaced at an earlier point." *Id.* The document suggests that the history of depression dated back to the 2009 injury. *Id.* Although therapy was recommended, Officer ██████ denied suicidal ideations. CX 5, p. 51; CX 6, p. 24.

A March 21, 2019, Office note (Dr. ██████ W███) makes no mention of psychological issues. CX 5, pp. 51-52. The next month, on April 19, 2019, Officer ██████ participated in an individual therapy session with Dr. S███. During the session Officer ██████ told Dr. S███ that he was "coming around now . . . feeling better and less irritated." CX 6, p. 25. He attributed his improvement to changes in medication and Dr. S███ advised him to seek help if his depressive symptoms reemerge. *Id.* With respect to his marital issues, Officer ██████ said that his wife was "not speaking to me. I feel lost." *Id.* Officer ██████ and his wife were to continue couples therapy. CX 6, p. 25; CX 5, p. 52.

On May 17, 2019, a Family Medicine IME (L███) concluded that Officer ██████'s heart condition was worsening but made no mention of psychological issues. CX 5, p. 53. An August 28, 2019, Occupational Medicine IME (K███) also makes no mention of psychological issues. CX 5, p. 56.

Six weeks later, on October 14, 2019, Officer ██████ died by suicide. CX 5, p. 56-57.

The record before this body includes two additional documents submitted by Appellant to suggest a causal link between the 2009 injury and Officer ██████'s mental health.

The first is an August 1, 2011, memorandum from Officer ██████'s Acting Supervisor indicating that he "has observed tangible changes in PO3 ██████ and his performance over the last few years; including but not limited to the onset of the infection that very nearly cost him his life." AX 16. The supervisor strongly urged a fitness for duty evaluation of "both physical and emotional/mental aspects." AX 16, p. 4. The emphasis of the memo is on Officer ██████'s apparent physical limitations, but it also mentions "serious concerns regarding . . . mental, emotional, and physical health." The memo also says there are "significant concerns regarding PO3 ██████'s officer Safety skills, physical acumen, and emotional health. These concerns are due to a pattern of self-destructive behavior and the apparent lack of concern coupled with the inability to protect himself and his fellow officers." *Id.* The memo is not an expert medical opinion

or diagnosis drawing a causal link between the 2009 accident and Officer ██████'s mental or emotional health condition in 2011, let alone 2019.

The second document is a January 20, 2020, letter from Officer ██████'s sister, ██████ ██████, who is a licensed psychologist. Dr. ██████'s letter gives her opinion that since the 2009 injury Officer ██████ "suffered from obvious signs of depression." AX 17. Dr. ██████ also stated that she told their family that he was at high risk for suicide.

### **APPLICABLE CODE PROVISIONS AND REGULATIONS**

#### **Montgomery County Code, § 33-46. Death benefits and designation of beneficiaries.**

(a) *Beneficiary death benefits of an active member whose death is not service connected.*  
Upon the death of a member under circumstances not covered by subsection (b), the designated beneficiary must receive a death benefit payment equal to:

(1) member contributions, including picked-up contributions, with credited interest, or a spouse's, or domestic partner's, and children's benefit as provided in subsection (e); plus

(2) 50 percent of average final earnings if the member was a member of the employees' retirement system of the state of Maryland as of August 15, 1965, and became a member of the employees' retirement system of the County on or before December 31, 1966, or such later agency entrance date without a break in service, and who is not on leave without pay except for authorized leave without pay for illness.

(b) *Spouse's, or domestic partner's, and children's benefits of a member whose death is service connected.*

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(2) The Chief Administrative Officer must pay death benefits to the spouse or domestic partner and child of a Group F or G member as if the member had been receiving a service-connected disability pension on the date of the member's death and had selected a joint and survivor pension option of 100 percent of the amount payable to the member, if:

(A) the Group F or G member died while employed by the County; and

(B) the employing department, a beneficiary, or another person submits satisfactory proof to the Chief Administrative Officer that the member's death:

(i) resulted from injuries the employee received in the line of duty or was directly attributable to the inherent hazards of the duties the employee performed; and

(ii) was not due to the employee's willful negligence.

**Montgomery County Code, § 33-56. Interpretations.**

(a) The Chief Administrative Officer is responsible for deciding questions arising under this Article. Any . . . designated beneficiary eligible to receive benefits from the retirement system, may request, in writing, a decision on questions arising under this Article from the Chief Administrative Officer, who must respond in writing to such request within 60 days. The response must include a statement of appeal rights.

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(c) Any other decision by the Chief Administrative Officer may be appealed within 15 days to the Merit System Protection Board under procedures established by the Board. The decision of the Board is final.

**ISSUE**

Is the Chief Administrative Officer's determination that Officer ██████'s death was not service-connected correct?

**ANALYSIS AND CONCLUSIONS**

Montgomery County Code (MCC) § 33-46(b) provides that a spouse is entitled to death benefits as if the member had been receiving a service-connected disability pension on the date of the member's death if the member's death (i) resulted from injuries received in the line of duty *or* was directly attributable to the inherent hazards of the job; *and* (ii) was not due to the employee's willful negligence. It is undisputed that Appellant is eligible for *non-service-connected* death benefits under MCC § 33-46(a).

Appellant has the burden to prove by a preponderance of the evidence that Officer ██████'s death was the result of injuries received in the line of duty or directly attributable to the inherent nature of the job and that it was not due to his willful negligence. *See* MSPB Case No. 14-05 (2013); MSPB Case No. 91-27 (1993). The County contends that under Maryland tort law suicide is a superseding or intervening act that breaks the chain of causation between the 2009 work related injury and the 2019 death. Appellant correctly argues that the Board need not look to wrongful death tort law cases as this appeal must be resolved by interpretation of the County death benefits statute.

Thus, the Board must determine if the medical evidence supports a finding that Officer ██████'s 2019 death resulted from the injuries he received 10 years before in the training accident. "When there is a possible intervening cause, or death occurs substantially after the injury . . . the question of causal relationship between the injury and the death is largely factual." 1 Maryland Workers' Compensation Handbook, § 12.02 (2021). If the Board finds a causal relationship between the 2009 injury and Officer ██████'s 2019 death the Board must then determine whether he was willfully negligent.

The County ERS statute is similar to other federal, state, and local laws utilizing the same standard.<sup>5</sup> Cases interpreting those similar statutes, as well as the Workers' Compensation law (which has an exclusion for willful or intentional behavior),<sup>6</sup> therefore provide useful guidance for the Board's analysis.

***Did the Suicide Take Place While Officer ██████ Was Acting in the Line of Duty?***

The County argues that the self-inflicted gunshot wound did not occur while Officer ██████ was acting in the line of duty. An injury is in the line of duty if it occurs in the actual performance of a duty or if it arose out of or in the course of the actual performance of a duty. Injury caused by any other means is not in the line of duty. *Fire & Police Employees' Retirement System of Baltimore v. Middleton*, 192 Md. App. 354, 360 (2010), citing *Marsheck v. Board of Trustees of the Fire & Police Employees' Ret. Sys.*, 358 Md. 393, 410 (2000).

The County cites a State law that, while not controlling, provides guidance as to when a police officer is acting in the line of duty. Md. Code Ann., Pub. Safety § 3-507(a)(2) (“‘Death in the line of duty’ means the death of a law enforcement officer occurring while the officer is acting in the officer’s official capacity while on duty or while the officer is off duty but performing activities that are within the scope of the officer’s official duties.”).

Appellant does not appear to contend that the fatal injuries Officer ██████ received when he shot himself occurred while he was acting in the line of duty. Instead, Appellant argues that suicide is an inherent hazard of police work. That standard would not require that the death occur while the officer was acting in the line of duty.

The Board finds that when Officer ██████ died by suicide he was not engaging in police work or performing any of his official duties. While he was in his patrol car at the time, the death by suicide certainly was not authorized or in furtherance of any County or police business. Under the facts of this case, we conclude that Officer ██████’s death by suicide was not an act that occurred in the line of duty. This finding does not, of course, address whether the suicide was a *result* of an injury received in the line of duty in 2009.

***Directly Attributable to the Inherent Hazards of the Duties***

In addition to claiming that the 2019 suicide was a result of the 2009 injuries received in the line of duty Appellant suggests that law enforcement is “an extremely high stress field” and suicide is an inherent hazard of police work and thus “directly attributable to the inherent hazards of the duties the employee performed.” MCC § 33-46(b)(2)(B)(i). Appellant cites to studies finding a disturbingly high suicide rate among first responders, including, police officers but admits that there is no authority for the proposition that suicide is directly attributable to the inherent hazards of the job.

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<sup>5</sup> See, e.g., Md. Code Ann., State Pers. & Pens. § 29-203(b)(1): “This subsection applies only to an individual who dies while employed as a member of the Law Enforcement Officers’ Pension System:

(i) without willful negligence by the member; and

(ii) with death arising out of or in the course of the actual performance of duty.”

<sup>6</sup> Md. Code Ann., Labor & Employment Article, § 9-506.



Whether or not there is medical evidence to support Appellant's position that Officer ██████'s death by suicide resulted from the 2009 injury, for suicide to be considered "directly attributable to the inherent hazards" of police work would require the Board to conclude that suicide is essentially an occupational disease. The MSPB has interpreted the phrase "directly attributable to the inherent hazards of the duties the employee performed" in the County Code by looking to the Maryland Workers' Compensation Act for guidance. MSPB Case Nos. 11-03 & 11-04 (2010) (Relying on the presumption in Md. Labor and Employment Article, § 9-503(a), to find that a firefighter's death from heart disease was directly attributable to the inherent hazards of the duties he performed).

Unlike cardiac disease, the Workers' Compensation Act does not expressly provide a presumption for stress related conditions arising out of police work. The Act "requires proof of the existence of a "disease" *plus* evidence that the risk of the disease is *due* to the nature of the employment in which the hazards of the disease *actually exist*, and that it is reasonable that the employment and not outside forces caused the disease." (emphasis in original). 1 Maryland Workers' Compensation Handbook § 8.13. *See* Md. Code Ann., Lab. & Empl. § 9-502.

Appellant has not provided sufficient medical evidence, similar to that expected in cases involving physical injury, that extreme stress amounting to a mental health condition exists as a hazard of police work and that the "disease" was contracted because of the hazards of the employment. *King v. Board of Educ.*, 354 Md. 369, 381 (1999) (transportation assistant job found not to have inherent hazards of mental illness); *Means v. Baltimore County*, 344 Md. 661, 670 (1997) (factual determination required for claim that Post-Traumatic Stress Disorder is related to employment as paramedic; there must be sufficient proof to establish that the mental condition was caused by the employment).

### ***Was there Willful Negligence?***

The County argues that even if the Board concludes that Officer ██████'s suicide was a result of his 2009 injury and thus could be considered in the line of duty, his wife is not entitled to service-connected death benefits because his suicide was "willful negligence."<sup>7</sup> We reject the County's argument.

In *Thomas v. State Retirement & Pension System*, 420 Md. 45, 55-56 (2011), the Court of Appeals interpreted the phrase "willful negligence" in the context of a State disability retirement statute using language similar to the County provision at issue. Under Md. Code Ann., State Personnel & Pensions Article, § 29-111(b)(1), to qualify for special disability benefits a Maryland State Police retiree must be "totally and permanently incapacitated for duty arising out of or in the course of the actual performance of duty without willful negligence by the member."

In its analysis of Maryland law, the *Thomas* court expressly adopted the North Carolina Supreme Court's definition of "willful negligence," which the *Thomas* court further found was consistent with New Jersey's statutory definition. 420 Md. at 55.<sup>8</sup> The court quoted the North

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<sup>7</sup> As discussed above, the Montgomery County Code, § 33-46(b)(2)(B)(ii), requires that for a service-connected death benefit the employee's death must not be due to the employee's willful negligence.

<sup>8</sup> The court said, at 420 Md. at 55:

Carolina Supreme Court's decision in *Foster v. Hyman*, 197 N.C. 189, 148 S.E. 36 (N.C. 1929), where that court stated that ““willful negligence involves a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another, . . . or which is imposed on the person by operation of law.”” *Id.* at 37-38. See MSPB Case No. 96-04 (1996), adopting the construction of “willful neglect” in *Singer Co., Link Simulation Sys. Div. v. Balt. Gas & Elec. Co.*, 79 Md. App. 461, 479-80 (1989) (the phrase “willful neglect” suggests intentional, conscious, or known negligence - a knowing disregard of a plain or manifest duty.”).<sup>9</sup>

The County argues that under Maryland law suicide is a deliberate, intentional, and independent superseding or intervening act, relying on *Sindler v. Litman*, 166 Md. App. 90, 112-13 (2005), a wrongful death tort case. Appellant contends that this is not a tort case but rather a matter of statutory construction. Appellant has the better argument. Specifically, MCC § 33-46(b)(2)(B) provides that Appellant is entitled to service-connected death benefits if Officer ██████'s death resulted from injuries received in the line of duty and was not due to his willful negligence. Nothing in the statute suggests that if there is causation, *i.e.*, the suicide is a result of the 2009 injury, that a principle of tort law breaks that chain of causation.

The tort law “suicide rule” in *Sindler* is rooted in the concept that suicide is so extraordinary or unexpected that it is not reasonably foreseeable as a matter of law. This notion that because suicide is an unforeseeable consequence of a party's negligence, and thus a superseding cause of death, is logically inapplicable to this case. Neither the County's Employee's Retirement System law nor the Workers' Compensation Act require a determination that the County as an employer is a tortfeasor responsible for Officer ██████'s death. Instead, they are remedial statutes designed to provide compensation and benefits under statutorily established circumstances. Essentially both are insurance.<sup>10</sup>

The “suicide rule” espoused in *Sindler* is also inconsistent with the Workers' Compensation Act, which the MSPB has looked to for guidance. “Self-inflicted injuries such as suicides may form the basis for a compensable claim when it has been proven that the self-destructive act flowed as a natural consequence of an initially compensable injury.” 1 *Maryland Workers' Compensation Handbook* § 6.05 (2020). See *Young v. Hartford Accident & Indemnity Co.*, 303 Md. 182, 191 (1985) (“A suicide attempt is not always an intervening cause which breaks the nexus between the accidental injury and the injury suffered in the suicide attempt.”); *Baber v. John C. Knipp & Sons*, 164 Md. 55 (1933) (compensation possible if claimant's mental derangement and subsequent suicide were causally related to an industrial injury); *Baltimore & Ohio R.R. Co. v. Brooks*, 158 Md. 149 (1930) (recognizing compensability when there is sufficient evidence that emotional disorder and subsequent suicide were causally related to an initial accidental injury).

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We agree with and adopt the above quoted definition of willful negligence, which is consistent with New Jersey's statutory definition of that term. Like Maryland, New Jersey's police officers and firefighters are eligible to receive “accidental disability retirement” benefits only if their disabilities were not the result of their willful negligence.

<sup>9</sup> For a recent New Jersey court's explanation of its statute, see *In re N.J.A.C. 17:2-6.5*, 468 N.J. Super. 229, 242 (Super. Ct. App. Div. 2021) (“willful negligence” consists of conduct which manifests a reckless disregard for the consequences coupled with a consciousness that injury will naturally or probably result).

<sup>10</sup> *Cf.*, *Jutzi-Johnson v. United States*, 263 F.3d 753, 756 (7th Cir. 2001).

Appellant persuasively urges the Board to use a “chain of causation” test to determine if Officer ██████’s death was the result of the 2009 injury and not willful negligence. Although there is no Maryland case directly on point, there are cases which appear to support the chain of causation test. *See, e.g., Baber v. John C. Knipp & Sons* 164 Md 55 (1933) (chain-of-causation test favorably quoted but not specifically adopted). And, as noted above, the Court of Appeals has adopted New Jersey and North Carolina interpretations of “willful negligence” in the context of state disability statutes. *See Kahle v. Plochman, Inc.*, 85 N.J. 539, 546 (1981) (death by suicide 10 years after injury was not intentional and was compensable under the workers’ compensation law where there was “extreme pain and despair, of such severity as to override normal rational judgment.”); *Petty v. Associated Transp., Inc.*, 276 N.C. 417, 428 (1970) (“an employee who becomes mentally deranged and deprived of normal judgment as the result of a compensable accident and commits suicide in consequence does not act wilfully. . .”).

As we have explained above, the “suicide rule” espoused in *Sindler* is not applicable in this appeal. Officer ██████’s death by suicide did not by operation of law constitute a superseding or intervening act, nor is there evidence that it was willful negligence. We review this appeal using the chain of causation test.

***Did the 2019 Suicide Result From the 2009 Injury?***

The 2009 training incident injuries were in the line of duty. The WCC determined that the 2009 incident was a work-related injury. The issue now is whether Officer ██████’s 2019 death by suicide “resulted from” the 2009 line of duty injury.

The chain of causation rule advocated by Appellant requires her to show that a preponderance of the evidence would support a finding that there was an unbroken chain of causation between the training injury suffered by Officer ██████ and his death by suicide 10 years later. *See Kahle v. Plochman, Inc.*, 85 N.J. at 548 (“Petitioner must prove by a preponderance of the expert medical evidence that there was an unbroken chain of causation between the compensable injury, the employee’s disturbance of mind, and her ultimate suicide.”).

After reviewing the medical documentation, the four medical experts serving on the DRP found that the medical evidence was insufficient to support a finding that the 2019 suicide resulted from the injuries that occurred 10 years earlier in 2009. CX 5, pp. 2-4.

Some of the medical records in the DRP’s report included findings of depression associated with the 2009 injury. For example, Dr. W█████ noted in September 2011 that Officer ██████ was having concerns about his marriage, depression, and sleep difficulties related to the 2009 injury. CX 5, pp. 25-26; CX 6, pp. 29-30. The DRP acknowledged that in 2013 Dr. S█████ diagnosed Officer ██████ with depression that was related to the 2009 injury. CX 5, p. 3. But the DRP deemed it notable that during the nearly six years between Dr. S█████’s 2013 evaluation and March 10, 2019, there was no medical “documentation of evaluation and/or treatment for depression.” *Id.*

The DRP also pointed to medical evidence that other issues could have been the cause of Officer ██████’s depression. In fact, the depression was never found to include suicidal ideation or behavior by a medical professional treating or evaluating Officer ██████. In addition, the most recent evaluation addressed that issue. It pointed to the fact that on March 11, 2019, Dr. ██████ S█████ discussed the marital problems of Appellant and Officer ██████ which had surfaced before

the 2009 injury, but became worse after the 2009 injury, as well as the history of depression following the 2009 injury. But Dr. S [REDACTED] also specifically noted that Officer [REDACTED] was not suicidal. CX 6, p. 24. In fact, after an April 19, 2019 session Dr. S [REDACTED] stated that Officer [REDACTED] was “feeling better and less irritated” but still concerned because his wife was not communicating with him and had become more distant. There was also discussion of Officer [REDACTED]’s weight problem. CX 6, p. 25.

Although the record reflects that Officer [REDACTED] had suffered from depression, the severity of his condition is not clear. And while the 2009 injury was undeniably and understandably a factor in that condition, there are also other reasons found in the medical record for his depression. For example, he was morbidly obese and had long standing marital problems. CX 5, pp. 11, 51, 57; CX 6, pp. 10, 29. Those issues were aggravated by the 2009 injury, but the record also reflects that he struggled with his weight<sup>11</sup> and marital problems before the 2009 injury, and that he was only evaluated and treated for depression sporadically for many years. CX 5, p. 2.

Although a determination of a causal connection between the 2009 injury and Officer [REDACTED]’s 2019 death by suicide is factual in nature, a proper evaluation requires that the Board consider expert medical opinions. It is true that expert medical testimony is not always required where a causal connection is clearly apparent. However, in this case death occurred substantially after the injury, there was evidence of possible intervening causes, and there are not consistent indications in the voluminous medical record linking depression of the kind that would be the basis for a suicide to the earlier injury. We thus conclude that the causal link between the 2009 injury and the 2019 suicide is not clearly apparent, thus making medical testimony necessary to a finding of a causal link. *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 368 (2013) (where a causal connection between physical injuries and psychological harm “is neither clearly apparent, nor within the ‘common experience, knowledge, or observation of laymen’ . . . expert testimony is necessary”), *citing Vance v. Vance*, 286 Md. 490, 503 (1979) (“in instances where there is a significant temporal lapse between the disability and the negligent act . . . proof of causation must be by expert testimony”). As demonstrated above, clear medical evidence to support such a finding is lacking in this case.

While there is evidence that Officer [REDACTED] suffered from depression as a result of the 2009 injury, there is insufficient expert medical evidence that his mental state in 2019 was due to the 2009 injury, or that at the time of the suicide his mental disorder was of such severity as to override rational judgment. This body cannot find information which would cause it to disagree with the ultimate findings of medical professionals who reviewed the complete medical record.

The additional evidence in the record provided by Appellant does not support overturning the CAO’s decision which was based on the evaluation of the DRP. Although Dr. [REDACTED], Officer [REDACTED]’s sister, suggested a connection between the 2009 injury and Officer [REDACTED]’s 2019 death by suicide, even she had to acknowledge the limited evidence of his depression: “I strongly believe that [REDACTED] [Officer [REDACTED]] likely experienced far more physical, cognitive, and emotional problems than we knew about and that his undiagnosed, untreated depression ultimately killed him.” AX 17. Notwithstanding her personal insights, the views concerning causation expressed in Dr. [REDACTED]’s

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<sup>11</sup> For example, Dr. W [REDACTED] noted that Officer [REDACTED] admitted that he had been struggling with his weight before the 2009 injury. CX 6, p. 29.

letter are plainly speculative and cannot be considered as expert medical opinion. Moreover, Dr. [REDACTED]'s views must be given less weight than those of the doctors who evaluated and treated Officer [REDACTED] and upon whom the DRP relied because, as she acknowledges, "I obviously cannot provide a completely objective clinical opinion" concerning her brother. AX 17.

Given the length of time between the injury and the suicide, and the fact that Officer [REDACTED] had returned to duty full time some eight years before his suicide, expert medical opinions of a causal connection between the 2009 injury and the suicide are essential to support a finding that there is an entitlement to the benefits requested. The medical evidence that does exist does not support a finding of a causal connection between the 2009 injury and the 2019 suicide. Moreover, the record lacks evidence that Officer [REDACTED] suffered from severe depression, was in constant significant or unbearable pain, or had suicidal ideation. It is also significant that there is little indication that Officer [REDACTED] sought treatment for depression, other than the fact that he participated in marriage counseling and an occasional individual therapy session. Significantly, neither the Workers' Compensation Commission nor the Circuit Court made a finding that there was a compensable psychiatric injury as a result of the 2009 infection.

A finding that Officer [REDACTED]'s death by suicide was in the line of duty because it was a result of the 2009 injury would require that the Board reject the expert medical findings of the DRP and conclude that a preponderance of the medical evidence supports the causal link ("resulted from injuries . . . received in the line of duty") between the 2009 injury and the 2019 suicide. We are unable to reach that conclusion and must find that the preponderance of medical evidence does not support a finding required by law that there is a causal connection between the 2009 injury and Officer [REDACTED]'s 2019 death by suicide.

We thus find that the CAO and the DRP appropriately found insufficient medical evidence that Officer [REDACTED]'s tragic suicide was a result of his on-the-job injury ten years before.

### **ORDER**

Based upon the foregoing analysis and finding that a hearing on this matter is unnecessary, the Board **DENIES** the appeal.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, §33-15, *Judicial review and enforcement*, and MCPR, §35-18, *Appeals to court of MSPB decisions*, within 30 days of this Order a petition for judicial review may be filed with the Circuit Court for Montgomery County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board  
March 10, 2022

[REDACTED]  
Harriet E. Davidson  
Chair