

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12989
C/hu

_____AD3d_____

Argued - October 27, 2006

ROBERT W. SCHMIDT, J.P.
WILLIAM F. MASTRO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2006-00028

DECISION & ORDER

In the Matter of John Dotzler, appellant, v New York
City Employees' Retirement System (NYCERS),
respondent.

(Index No. 36480/04)

Agruso & Trovato, LLP, Ronkonkoma, N.Y. (Andrew P. Vecere of counsel), for
appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis Caputo and
Karen M. Griffin of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the
respondent, New York City Employees' Retirement System (NYCERS), dated July 8, 2004, which
denied the petitioner's application for accident disability retirement benefits pursuant to Retirement
and Social Security Law § 605-b, the appeal is from a judgment of the Supreme Court, Kings County
(F. Rivera, J.), dated August 5, 2005, which denied the petition, and, in effect, dismissed the
proceeding.

ORDERED that the judgment is affirmed, with costs.

The Board of Trustees of the respondent, New York City Employees' Retirement
System (NYCERS) (hereinafter the Board of Trustees), properly denied the petitioner's application
for accident disability retirement benefits pursuant to Retirement and Social Security Law § 605-b.
In April 2001 the petitioner was awarded ordinary disability retirement benefits after the Medical

December 12, 2006

Page 1.

MATTER OF DOTZLER v NEW YORK CITY EMPLOYEES'
RETIREMENT SYSTEM (NYCERS)

Board of the respondent (hereinafter the Medical Board) determined that the disabling condition was a cervical disectomy and fusion resulting from a neck injury sustained on August 5, 1999. On November 12, 2002, the petitioner applied for accident disability retirement benefits under Retirement and Social Security Law § 605-b on the basis of an injury to his right knee and back sustained in an on-the-job incident on March 8, 2000. The Medical Board recommended the denial of the application, finding that the petitioner was not disabled as a result of the March 8, 2000, injury to his right knee and back, but, as previously determined by the Medical Board, the disability was to his cervical spine. The petitioner submitted no evidence that this injury was service-related or caused by an on-the-job incident.

The Board of Trustees was bound by the finding of the Medical Board as to disability because it was supported by some credible evidence (*see Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d 756; *Matter of Sorrenti v New York City Fire Dept., Art. 1-B Pension Fund*, 90 NY2d 139, 145-147). Based upon the credible evidence before the Medical Board, the determination of the Board of Trustees was neither irrational nor arbitrary and capricious (*see Matter of Borenstein v New York City Employees' Retirement Sys.*, *supra*; *Matter of Imbriale v Board of Trustees of N.Y. City Employees' Retirement Sys.*, 29 AD3d 995). Contrary to the petitioner's contention, although the reports and conclusions of his physicians differed from those of the Medical Board, it was solely within the province of the Medical Board to resolve the conflict (*see Matter of Ramsey v City of New York*, 8 AD3d 392; *Matter of Santoro v Board of Trustees of New York City Fire Dept., Art. 1-B Pension Fund*, 217 AD2d 660).

The petitioner's remaining contentions are without merit.

SCHMIDT, J.P., MASTRO, FISHER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court