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

D16103
G/gts

_____AD3d_____ Submitted - May 29, 2007

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
RUTH C. BALKIN, JJ.

2006-04458 DECISION & ORDER

In the Matter of Raymond Nicchia, appellant,
v County of Nassau, et al., respondents.

(Index No. 14688/05)

Reynold A. Mauro, Commack, N.Y., for appellant.

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Karen Hutson and Dennis J. Saffran of counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the respondents dated June 2, 2005, which terminated the petitioner's benefits pursuant to General Municipal Law § 207-c, the petitioner appeals from a judgment of the Supreme Court, Nassau County (Parga, J.), entered January 23, 2006, which denied the petition and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

Contrary to the petitioner's contention, there is a rational basis in the record for the respondents' determination terminating his benefits pursuant to General Municipal Law § 207-c. The objective medical evidence established that the petitioner is physically capable of performing light duty work. Further, the petitioner failed to timely claim his entitlement to General Municipal Law § 207-c benefits based upon alleged psychological injuries because such request was not made until approximately four years after the alleged injuries occurred. Consequently, the respondents' determination terminating the petitioner's benefits had a rational basis and was not arbitrary and

capricious (*see Matter of Cole-Hatchard v Sherwood*, 309 AD2d 933; *Matter of Miele v Town of Clarkstown*, 299 AD2d 362).

Further, the petitioner was not entitled to a due process hearing. The relevant collective bargaining agreement specifies that a corrections officer, such as the petitioner, may opt to resolve a dispute regarding General Municipal Law § 207-c benefits by submitting to an independent medical evaluation in lieu of a hearing, the results of which are binding upon all parties. Because the petitioner chose to resolve the instant dispute through a medical examination, he was not entitled to a hearing (*see Matter of Gamma v Bloom*, 274 AD2d 14).

SCHMIDT, J.P., SANTUCCI, SKELOS and BALKIN, JJ., concur.

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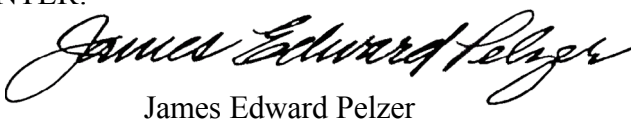

James Edward Pelzer
Clerk of the Court