

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

D22053  
C/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - January 9, 2009

WILLIAM F. MASTRO, J.P.  
ANITA R. FLORIO  
JOSEPH COVELLO  
ARIEL E. BELEN, JJ.

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2008-01306

DECISION & ORDER

In the Matter of Richard Harrison, petitioner, v Nicholas Scopetta, etc., et al., respondents.

(Index No. 3052/07)

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Jeffrey L. Goldberg, P.C., Lake Success, N.Y., for petitioner.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Mordecai Newman and Ilyse Sisolak of counsel; Eric Sapir on the brief), for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the respondent Board of Trustees of the New York City Fire Department, Article 1-B Pension Fund, dated September 29, 2006, which denied the petitioner's application for service-related accidental disability retirement benefits, the petitioner appeals from a judgment of the Supreme Court, Kings County (Partnow, J.), dated December 4, 2007, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The issue of whether a member of the New York City Fire Department is disabled is determined by the Medical Board of the New York City Fire Department, Article 1-B Pension Fund (hereinafter the Medical Board) (*see Matter of Campbell v Board of Trustees of N. Y. City Fire Dept., Art. 1-B Pension Fund*, 47 AD3d 926, 927). The Medical Board's determination that the member is not disabled for duty is conclusive if it is supported by some credible evidence and is not irrational (*see Matter of Campbell v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 47 AD3d at 927; *Matter of Clarke v Board of Trustees of N.Y. City Fire Dept., Art. 1-B*

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*Pension Fund*, 46 AD3d at 559; *Matter of Vastola v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 37 AD3d 478; *Matter of Vidal v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 32 AD3d 399; *Matter of Hession v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 23 AD3d 468; *Matter of Kuczinski v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 8 AD3d 283, 284). Here, the Medical Board's determination that the petitioner was not disabled for duty, based on the report of an examining neurosurgical consultant, is supported by some credible evidence and is not irrational (see *Matter of Clarke v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 46 AD3d at 559-60; *Matter of Vastola v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 37 AD3d at 479). Accordingly, the respondent Board of Trustees of the New York City Fire Department, Article 1-B Pension Fund properly abided by that determination, and the Supreme Court properly denied the petition and dismissed the proceeding.

MASTRO, J.P., FLORIO, COVELLO and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court