

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

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Submitted - November 23, 2009

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2008-10923

DECISION & ORDER

In the Matter of Primo Cassarino, appellant, v New York City Employees' Retirement System, et al., respondents.

(Index No. 11984/08)

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

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Elizabeth I. Freedman of counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the Board of Trustees of the New York City Employees' Retirement System dated December 13, 2007, which denied the petitioner's application for accidental disability retirement benefits pursuant to Retirement and Social Security Law § 605-b, the petitioner appeals from a judgment of the Supreme Court, Kings County (Balter, J.), dated September 22, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The Supreme Court properly concluded that the determination of the Board of Trustees of the New York City Employees' Retirement System dated December 13, 2007, which denied the petitioner's application for accidental disability retirement benefits pursuant to Retirement and Social Security Law § 605-b, was not arbitrary and capricious. The petitioner's injuries resulted solely from the performance of his usual duties as a sanitation worker (*see Matter of Kehoe v City of New York*, 81 NY2d 815; *Matter of Danyi v Board of Trustees of N.Y. City Employees'*

Retirement Sys., 176 AD2d 451). Further, the petitioner's slip or trip on a strap located on the floor of the sanitation truck as he alighted therefrom is not so out of the ordinary or unexpected as to constitute an "accidental" injury as a matter of law (*see Matter of Starnella v Bratton*, 92 NY2d 836, 839).

The respondents' remaining contention need not be reached in light of our determination.

MASTRO, J.P., BALKIN, BELEN and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court