

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

D33534
Y/kmb

_____AD3d_____

Argued - December 15, 2011

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2010-12108

DECISION & ORDER

In the Matter of Joseph Relyea, appellant, v
Metropolitan Transportation Authority, respondent.

(Index No. 1596/10)

Joseph Relyea, Brooklyn, N.Y., appellant pro se.

James B. Henly, New York, N.Y. (Ching Wah Chin of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the Metropolitan Transportation Authority dated November 7, 2007, which denied the petitioner's application for a disability pension, the petitioner appeals from a judgment of the Supreme Court, Kings County (Solomon, J.), dated October 22, 2010, which, without a hearing, denied the petition and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

“Generally, in a CPLR article 78 proceeding, [courts] examine whether the action taken by the agency has a rational basis” and will overturn that action only “where it is ‘taken without sound basis in reason’ or ‘regard to the facts’” (*Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280, quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431; see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 232), or where it is “arbitrary and capricious” (*Matter of Deerpark Farms, LLC v Agricultural & Farmland Protection Bd. of Orange County*, 70 AD3d 1037, 1038; see *Matter of Ignizio v City of New York*, 85 AD3d 1171, 1174). Here, the determination of the respondent that the petitioner was not eligible for a disability pension was not

arbitrary and capricious. The petitioner did not have the required 10 years of credited service in order to be eligible for a disability pension.

MASTRO, A.P.J., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court