

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

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Argued - May 14, 2012

REINALDO E. RIVERA, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2011-03320

DECISION & ORDER

In the Matter of Robert Martirano, appellant, v Salvatore  
Cassano, etc., et al., respondents.

(Index No. 7373/10)

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Chet Lukaszewski, P.C., Lake Success, N.Y., for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Paul T. Rephen and  
Inga Van Eysden of counsel), 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 November 25, 2009, which denied the petitioner's application for accident disability retirement  
benefits, the petitioner appeals from a judgment of the Supreme Court, Kings County (Bunyan, J.),  
dated January 9, 2011, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The issue of whether a firefighter is disabled is determined by the Medical Board of  
the New York City Fire Department, Article 1-B Pension Fund (hereinafter the Medical Board), and  
its "determination . . . is conclusive if it is supported by some credible evidence and is not irrational"  
(*Matter of Rodriguez v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 3 AD3d  
501, 501). Credible evidence is "evidence that proceeds from a credible source and reasonably tends  
to support the proposition for which it is offered" (*Matter of Meyer v Board of Trustees of N.Y. City  
Fire Dept., Art. 1-B Pension Fund*, 90 NY2d 139, 147). In this case, the determination of the  
Medical Board that the petitioner's condition would not preclude full fire fighting duty was  
supported by credible evidence, including the report of an impartial neurosurgeon, who adhered to

his recommendation following a second review and consideration of additional records. While the record also contains the medical findings of several other doctors who disagreed with this neurosurgeon's conclusions, "[w]here conflicting evidence and medical reports are presented before the Medical Board . . . it is solely within the province of the Medical Board and the Board of Trustees to resolve the conflict" (*Matter of Santoro v Board of Trustees of N.Y. City Fire Dept. Art. 1-B Pension Fund*, 217 AD2d 660, 661). Thus, the Board of Trustees of the New York City Fire Department, Article 1-B Pension Fund, properly upheld the Medical Board's recommendation, and the Supreme Court properly denied the petition and dismissed the proceeding.

RIVERA, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court