

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

D35265  
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Argued - May 4, 2012

PETER B. SKELOS, J.P.  
JOHN M. LEVENTHAL  
ARIEL E. BELEN  
SHERI S. ROMAN, JJ.

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2011-04131

DECISION & JUDGMENT

In the Matter of Kenneth Davenport, petitioner, v  
City of Mount Vernon, et al., respondents.

(Index No. 18657/09)

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Bartlett, McDonough, & Monaghan, LLP, White Plains, N.Y. (Sean Dooley of counsel), for petitioner.

Coughlin & Gerhart, LLP, Endicott, N.Y. (Paul J. Sweeney of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Fire Commissioner of the City of Mount Vernon dated October 20, 2010, which adopted the recommendation of a hearing officer dated October 4, 2010, made after a hearing, and affirmed the denial of the petitioner's application for supplemental benefits pursuant to General Municipal Law § 207-a(2).

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The determination of the Fire Commissioner of the City of Mount Vernon (hereinafter the Commissioner), which adopted the recommendation of a hearing officer, and affirmed the denial of the petitioner's application for supplemental benefits pursuant to General Municipal Law § 207-a(2), was supported by substantial evidence (*see Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499; *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180-181; *Matter of Collins v Codd*, 38 NY2d 269, 270). The record, among other things, contains evidence consisting of the reports of three orthopedic surgeons, each of whom concluded that the petitioner's condition

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was not caused by an accident that allegedly occurred on November 16, 1994. The Commissioner had the authority to evaluate conflicting medical evidence, and was free to credit evidence based on reports of one set of physicians over that of another set of physicians (*see Matter of D'Onofrio v City of Mount Vernon*, 226 AD2d 719, 720; *Matter of Flynn v Zaleski*, 212 AD2d 706).

The petitioner's remaining contentions are without merit.

SKELOS, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:

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

Aprilanne Agostino  
Clerk of the Court