

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

648

CA 13-02240

PRESENT: SCUDDER, P.J., FAHEY, CARNI, VALENTINO, AND WHALEN, JJ.

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IN THE MATTER OF ROBERT GUESNO,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

VILLAGE OF EAST ROCHESTER,  
RESPONDENT-RESPONDENT.

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TREVETT CRISTO SALZER & ANDOLINA P.C., ROCHESTER (ERIC M. DOLAN OF  
COUNSEL), FOR PETITIONER-APPELLANT.

COUGHLIN & GERHART, LLP, BINGHAMTON (PAUL J. SWEENEY OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order) of the Supreme Court,  
Monroe County (Thomas A. Stander, J.), entered March 12, 2013 in a  
CPLR article 78 proceeding. The judgment denied the petition.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to  
CPLR article 78 challenging the determination terminating his General  
Municipal Law § 207-c benefits on the ground that his current  
disability is not related to an on-the-job injury. Contrary to  
petitioner's contention, Supreme Court properly refused to transfer  
the proceeding pursuant to CPLR 7804 (g) inasmuch as the petition does  
not raise an issue of substantial evidence (*see Matter of Guillory v  
Fischer*, 110 AD3d 1426, 1427, *appeal dismissed* 22 NY3d 1111; *Matter of  
Burns v Carballada*, 101 AD3d 1610, 1611, *appeal dismissed and lv  
denied* 22 NY3d 926). "Where, as here, a petition does not raise a  
substantial evidence issue, a court's inquiry is 'limited to whether  
[the determination] was arbitrary, capricious or affected by error of  
law' " (*Matter of Koch v Sheehan*, 95 AD3d 82, 89, *affd* 21 NY3d 697).  
The record supports the court's conclusion that the determination was  
neither arbitrary and capricious, i.e., "without sound basis in reason  
and . . . without regard to the facts" (*Matter of Pell v Board of  
Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale &  
Mamaroneck, Westchester County*, 34 NY2d 222, 231), nor affected by an  
error of law (*cf. Matter of White v County of Cortland*, 97 NY2d 336,  
339).

Entered: June 20, 2014

Frances E. Cafarell  
Clerk of the Court