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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 208 SSM 16
In the Matter of Jean Lang,
Appellant,
v.
Raymond Kelly, &c., et al.,
Respondents.

Submitted by appellant, pro se.
Submitted by Keith M. Snow, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed with costs, and the certified question not answered on the ground that it is unnecessary.

In March 2007, petitioner tripped over computer wires that for several months had been strung on the floor across a locker

room doorway in her precinct. In a 6-6 decision, respondent Board of Trustees denied her application for accidental disability retirement benefits (City of New York v Schoeck, 294 NY 559, 568 [1945] [tie vote of the Board of Trustees will be resolved against applicant]).

We agree with the Appellate Division that the Board of Trustees could find on this record that petitioner's 2010 statement, which claimed that tape ordinarily secured the wires to the floor but was no longer present on the date she fell, was not credible. Because the record does not establish as a matter of law that petitioner's injury resulted from an incident that was "sudden, fortuitous...unexpected [or] out of the ordinary," the Board's determination must be upheld (McCambridge v McGuire, 62 NY2d 563, 568 [1984]; Lichtenstein v Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II, 57 NY2d 1010, 1012 [1982]).

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On review of submissions pursuant to section 500.11 of the Rules of the Court of Appeals, order affirmed, with costs, and certified question not answered on the ground that it is unnecessary, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur. Judge Abdus-Salaam took no part.

Decided June 25, 2013