

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

3 No. 222 SSM 44
In the Matter of Paul G. Kenny,
 Appellant,
 v.
Thomas P. DiNapoli, as New York
State Comptroller,
 Respondent.

Submitted by Annette G. Hasapidis, for appellant.
Submitted by William E. Storrs, for respondent.

MEMORANDUM:

The judgment of the Appellate Division should be affirmed, with costs.

In the context of accidental disability retirement benefits, we have defined an accident as a "sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in

impact" and we have indicated that "an injury which occurs without an unexpected event as the result of activity undertaken in the performance of ordinary employment duties, considered in view of the particular employment in question, is not an accidental injury" (Matter of Lichtenstein v Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II, 57 NY2d 1010, 1012 [1982]). In this case, the Comptroller denied the application for accidental disability retirement benefits because petitioner, who slipped on a wet ramp while exiting a restaurant, knew that the ramp was wet and therefore knew of the hazard that led to his injury before the incident occurred. In other words, the Comptroller was not persuaded that the incident involved an "unexpected event." Because the Comptroller's conclusion is supported by substantial evidence in the record, the determination was properly confirmed.

* * * * *

On review of submissions pursuant to section 500.11 of the Rules, judgment affirmed, with costs, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 17, 2008