

**Emeagwali v Department of Educ. of the City of N.Y.**

2024 NY Slip Op 31280(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 161422/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

PATRICK EMEAGWALI,

Petitioner,

- v -

THE DEPARTMENT OF EDUCATION OF THE CITY OF  
NEW YORK, THE CITY SCHOOL DISTRICT OF THE CITY  
OF NEW YORK, TEACHERS RETIREMENT SYSTEM OF  
THE CITY OF NEW YORK

Respondent.

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INDEX NO. 161422/2019

MOTION DATE 4/10/2024<sup>1</sup>

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 5,6- 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The petition to annul respondents’ denial of petitioner request for World Trade Center (“WTC”) retirement benefits is denied.

**Background**

Petitioner contends that he worked for respondent the Department of Education (“DOE”) for over 20 years and is currently on approved medical leave due to conditions suffered as a result of his response efforts during the September 11, 2001 attacks on the World Trade Center. He claims that he switched from the CUNY retirement system into DOE’s Teacher Retirement System (“TRS”) but that he was never credited with the appropriate years by the TRS.

<sup>1</sup> Although this proceeding was only reassigned to the undersigned this week, the Court is well aware that this proceeding has been pending for far too long. The Court apologizes, on behalf of the Court system, for the inexplicable delay in the resolution of this proceeding.

He claims that he was in lower Manhattan on September 11, 2001 due to his commute and that he assisted as many people as he could by giving them directions instead of fleeing the scene. Petitioner alleges that as a result of his exposure to the contaminated air around the WTC that day, he has suffered various conditions including asthma, COPD and hypertension. Petitioner argues that all of the days he took as sick leave were improperly charged to him despite the fact that they arose from the September 11, 2001 attacks.

He explains that he had to “buy back” his leave time and demands that he qualifies for TRS WTC benefits because of his medical conditions arising out of his status as a “responder” during September 11, 2001. Petitioner submitted a WTC disability retirement application to respondents that was rejected (NYSCEF Doc. No. 3). He seeks to challenge that determination in this proceeding.

In opposition, respondents contend that petitioner was not a member of TRS at the time of the September 11 attacks and therefore is not eligible for the WTC benefits. They claim that he did not participate in any rescue, recovery or cleanup as defined under the applicable statute (the New York Retirement and Social Security Law). They also point out that he was working for a non-city employer (DC37) as the time of the attacks.

Respondents’ rejection of petitioner’s application noted that petitioner “did not become a member of TRS until 2005” and that his “subsequent purchase of past service credit does not backdate your membership” (*id.*). It observed that “your allegation that you helped several passersby [sic] with directions on the day of the attack is too fleeting and removed from the official response to constitute participation in WTC rescue, recovery, and cleanup operations. Additionally, you did not perform this activity as part of your TRS-eligible employment for the Board of Education (now the Department of Education). Such employment did not bring you

downtown on the day of the attack and assisting strangers with directions was not part of your duties as a public school teacher” (*id.*).

Respondents insist that this determination was neither arbitrary nor capricious. They emphasize that petitioner was not disabled while he was both a member of the TRS and while performing his duties as an employee of the city or state.

In reply, petitioner insists that his role as a responder on September 11 was “essential” and that he helped many people with “where to go.” He insists that his efforts to help people saved many lives. With respect to his membership in the TRS, petitioner contends that “Even though Petitioner was offered membership by the TRS in 2005, Petitioner accepted the membership with the amount of prior credit available to him to purchase, which he did.” He argues that respondents improperly offered him the opportunity to buy credit and time without giving him the benefit of “back membership.”

### **Discussion**

“It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record and once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end. Indeed, the determination of an agency, acting pursuant to its authority and within the orbit of its expertise, is entitled to deference and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record” (*Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428-29 [1st Dept 2007], *affd* 11 NY3d 859 [2008] [internal quotations and citations omitted]).

The Court denies the petition. As an initial matter, there is no dispute that petitioner was not a member of TRS on September 11, 2001 and that he became a member of TRS in 2005. Petitioner contends he is entitled to some sort of back-dated membership by virtue of purchasing credit but he does not cite to any caselaw for the proposition that he is therefore entitled to back-dated WTC disability benefits. As respondents point out, the relevant statutory scheme provides that applicant must “actually [be] a member of the retirement system” (Retirement and Social Security Law § 605[b][3]).

Even if there was a basis to find that buying additional years of credit entitled petitioner to status as a member of TRS on September 11, 2001, there is no basis to find that respondents’ denial of his request for WTC benefits was arbitrary or capricious. The Retirement and Social Security Law provides that “Qualifying World Trade Center condition” shall mean a qualifying condition or impairment of health resulting in disability to a member who participated in World Trade Center rescue, recovery or cleanup operations for a qualifying period (Retirement and Social Security Law § 2[36][a]). “Participated in World Trade Center rescue, recovery or cleanup operations” shall mean any member who: (i) participated in the rescue, recovery, or cleanup operations at the World Trade Center site” (Retirement and Social Security Law § 2[36][e]).


Setting aside that petitioner was not a member of TRS, it was rational for respondents to find that petitioner did not meet his burden to show that he participated in “rescue, recovery or cleanup operations.” Respondents’ determination that petitioner’s alleged actions were “too fleeting and removed from the official response” on September 11, 2001 was absolutely logical. After all, the purpose of the WTC benefits is to provide enhanced benefits for first responders and those who helped clean up after the tragic attacks (*see Bitachi v Bd. of Trustees of New York*

*City Police Dept. Pension Fund*, 20 NY3d 268, 275-76, 958 NYS2d 680 [2012]). Examples of petitioners seeking these benefits include a police officer who “participated in rescue and recovery operations at Ground Zero” and “In the ensuing days, she logged over 60 hours of work at the site”, and another police officer who “was one of the first responders at the World Trade Center on September 11, 2001 and was on site when the first tower fell” (*id.* at 277).

Petitioner claims he directed people, including tourists, where to go and saved lives despite the fact that he was not a first responder (he was not a firefighter, police officer or other uniformed officer) or someone tasked with any official responsibility to direct people that day. Moreover, his job responsibilities did not require him to be downtown that day or have anything to do with assisting people. As respondents rationally noted, directing people is simply too far removed from the governmental response to qualify as being part of the rescue efforts that day.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

<p><u>4/11/2024</u> DATE</p>		 <hr/> ARLENÉ P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE