

**Lacey v New York City Empls. Retirement Sys.**

2024 NY Slip Op 31388(U)

April 10, 2024

Supreme Court, Kings County

Docket Number: Index No. 532314/2022

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10<sup>th</sup> day of April, 2024

PRESENT:  
HON. RICHARD VELASQUEZ

Justice.

-----X  
CHRISTOPHER LACEY,

Plaintiff,

-against-

Index No.: 532314/2022  
Decision and Order  
Mot. Seq. No. 1

THE NEW YORK CITY EMPLOYEES RETIREMENT  
SYSTEM ET AL,

Defendants,

-----X

The following papers NYSCEF Doc #'s 1 to 24 read on this motion:

| <u>Papers</u>                            | <u>NYSCEF DOC NO.'s</u> |
|--|-------------------------|
| Notice of Motion/Order to Show Cause     |                         |
| Affidavits (Affirmations) Annexed _____  | 1-6                     |
| Opposing Affidavits (Affirmations) _____ | 12-23                   |
| Reply Affidavits _____                   | 24                      |

After having come before the Court on October 18, 2023 and the court having heard oral argument and upon review of the foregoing papers the Court finds as follows:

Petitioner moves for a judgment pursuant to Article 78 reviewing and annulling the action of the respondents herein in denying petitioners application for an Accidental Disability Retirement (ADR) pursuant to New York Retirement and Social Security Law 605, and declaring such action to be arbitrary capricious, unreasonable and unlawful and 2) Directing and ordering Respondents to retire Petitioner with an Accidental Disability Retirement pension; or in the alternative 3) Directing and ordering

Respondents by way of remand to review Petitioner's application for an Accidental Disability Retirement benefit.

Petitioner contends the action of respondents in denying the application for a disability retirement under RSSL § 605 was arbitrary, capricious, unreasonable, unlawful in that The Board of Trustees failed to set forth an adequate basis for their denial of Petitioner's application and failing to articulate any reasoning for finding the occurrence was not an accident. Respondents deny and oppose the same.

### **FACTS**

It is undisputed Petitioner, Christopher Lacey, was a carpenter for the New York City Housing Authority ("NYCHA") and served continuously as a member of NYCHA until he was terminated effective September 24, 2018. The alleged injury occurred on September 7, 2017. It is undisputed that Petitioner was assigned to remove kitchen cabinets and countertops from a unit in a building located on Malcolm X Boulevard in Brooklyn. Petitioner was told by the maintenance person in the building and his supervisor that the piping under the sink had been disconnected in the apartment. Petitioner indicated that he looked under the sink and noticed that the piping was hard pipe, which was not ordinarily used. Petitioner indicated that it is not possible to determine if the line had been disconnected, because it was a hard piping. However, when petitioner went to remove the kitchen countertop, the piping was not disconnected, and as a result when he attempted to pull up on the countertop to remove it, it would not budge causing serious injuries to his back.

Thereafter, Petitioner filed an application for accidental disability retirement due to his aforementioned injury. The NYCERS Medical Board reviewed Petitioner's

application on April 15, 2019 and December 6, 2021. The Board of Trustees indicated that the sole issue for consideration was whether the injuries that occurred on September 7, 2017 were accidental. In their December 6, 2021 review of Petitioner's application, the Medical Board indicated that Petitioner was disabled from the duties of a Carpenter with the New York City Housing Authority due to the injuries to his lumbar spine on September 7, 2017. However, the Medical Board indicated that Petitioner's September 7, 2017 injuries were not caused by an accident because they occurred in the setting of the applicant's routine job duties without any unexpected external event. (Medical Board report annexed hereto as Exhibit B).

### ANALYSIS

Pursuant to CPLR §7803 "The only questions that may be raised in a proceeding under this article are: 3. Whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed;..." NY CPLR 7803 (McKinney).

The definition of what constitutes an accident is well-settled, and has been deemed to be a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact. *Lichtenstein v. Board of Trustees of the Police Pension Fund*, 57 NY2d 1010, 1012 (1982); *Matter of Leary v. N.Y.C. Employees' Retirement System*, 59 AD3d 547, 549 (2d Dep't 2009); *Matter of Walsh v. Scopetta*, 73 AD3d 1192, 1193 (2d Dep't 2010).

In the present case, The Board of Trustees indicated that they are not sure whether it was an accident or not, and then failed to articulate any basis for denying

Petitioner's application. The Board of Trustee's conclusory statement that the injury occurred in the setting of petitioner's routine work duties without any external event fails to adequately address the external event of the petitioner being informed the piping under the sink was disconnected, when it was not properly disconnected. Petitioner not only reasonably relied upon two individuals who stated that the piping was disconnected but was required to do so by his job responsibilities. It is important to note, it is not petitioners job responsibility to disconnect the water pipes nor is petitioner able to do so. It is clear and undisputed, that before petitioner removes the cabinets, the pipes for the water must be disconnected and has to be confirmed that it was done. Petitioner was told that this was done by the building manager as well as petitioners supervisor before he attempted to remove the cabinets, ultimately the water was not disconnected and this caused his injury.

In the present case, the issue before this court is whether or not the determination by Board of Trustees that the incident in question was not an accident was affected by an error of law or was arbitrary and capricious or an abuse of discretion. The Court of Appeals explained the nature of the arbitrary and capricious standard in *Pell v. Board of Educ. Of Union Free School Dist. No.1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 1974, 34 NY2d 222, 356 NYS 2d 833, 313 NE2d 321: "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Id.* at 231, 356 NYS 2d at 839, 313 NE2d at 325. The question, said the Court, is whether the determination has a "rational basis." *Id.*

In *Lichtenstein*, 57 NY2d at 1012, the Court indicated that a police officer who was leaning over the hood of a car to place a summons on the vehicle did not suffer an

accident because there was no precipitating cause, it was simply an exertional injury. In *McCambridge v. McGuire*, 62 NY2d 563 (1984), the Court of Appeals decided two separate cases in one decision. In one case, a police officer slipped on wet pavement while entering his patrol car. *Id.* In the other case, a detective was sitting at his desk performing his duties, when he got up and tried to steady himself by putting his hands on a coworker. *Id.* The coworker unexpectedly moved, and this caused the detective to lose his balance and fall to the floor. The Court held that this was also an accident and stated the following: In each of these claims the injuries were sustained in the line of duty and were accidents within the common sense definition adopted in *Lichtenstein*. To be distinguished are injuries sustained while performing routine duties but not resulting from unexpected events, e.g. back strains sustained while putting a tire in the trunk of a city vehicle (*Matter of Menna v. New York City Employees' Retirement System*, 59 NY2d 696).... It is critical in each of the present cases that there was a precipitating accidental event – in one case the loss of balance and fall to the floor; in the other, the slip on wet pavement and fall which was not a risk of the work performed.... *Id.*

The present case, just like the *McCambridge* case wherein petitioner's injuries occurred when in the course of his normal duties he hurt his back when the external precipitating event (i.e. the water pipes not being disconnected), the existence of which was totally unrelated to his employment and unexpected, therefore constituting an accident as a matter of law.... Therefore, the incident of the pipes not being disconnected, was a precipitating unexpected accidental event. As such, in the present case, the petitioner demonstrated The Board of Trustee's applied an erroneous legal standard when determining whether such an incident was an accident within the

meaning of Administrative Code of City of New York, §B18-43.0.”

Petitioner’s injuries on September 7, 2017, were accidental in that Petitioner’s injuries were precipitated by the piping under the sink not being properly disconnected. Petitioner was informed by his supervisor and by maintenance that the piping under the sink had been disconnected and that he could remove the kitchen cabinets and countertops. Petitioner reasonably relied on these individuals’ statements. However, since this sink used a type of piping that was not ordinarily used, he could not confirm by sight whether the pipe was disconnected. Petitioner went to remove the kitchen countertop, the countertop did not move because the piping was unexpectedly still connected, and this caused severe injuries to his back. Respondents indicated that there was no unexpected external event, and simply ignored addressing this issue of the piping under the sink. This is the exact type of sudden, unexpected, and out of the ordinary event discussed in *Lichtenstein and McCambridge*. If the piping under the sink had been properly disconnected as Petitioner was informed it was, Petitioner would not have incurred these disabling injuries.

Contrary to the Medical Board’s findings that “Petitioner’s testimony presented at the Board of Trustees meeting supports the finding that the fact that the pipes were still connected to the wall was neither “sudden,” “unexpected” or “out of the ordinary,” because Petitioner encountered this condition in the routine performance of his job duties.” Petitioner’s testimony presents the exact opposite that the accident in question was sudden unexpected and out of the ordinary. This was not a situation that had ever happened and should not have occurred. Moreover, being incorrectly informed that pipes were disconnected was an unforeseeable precipitating event, as such the boards

finding that this incident was not an accident is contrary to the definition of an accident as referenced above.

As such, Petitioners article 78 is hereby granted. The incident in question is as a matter of law an accident. This matter is remanded back to the Board for further consideration consistent with this court's finding that the incident is question is an accident.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York  
April 10, 2024

ENTER FORTHWITH:

  
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HON. RICHARD VELASQUEZ

**APR 10 2024**

**Hon. Richard Velasquez, JSC**

KINGS COUNTY CLERK  
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