

Matter of Gamman v Kelly

2003 NY Slip Op 30118(U)

January 2, 2003

Supreme Court, New York County

Docket Number:

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

Matter of
JOAN GAMMAN,

Petitioner,

Index No.: 105249/02

- v -

Motion Date: 10/31/02

RAYMOND KELLY, et al.,

Motion Seq. No.: 002

Respondents.

Motion Cal. No.: _____

The following papers, numbered 1 to 4 were read on this petition to overturn an administrative determination.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

PAPERS NUMBERED

1, 2

3, 4

SCANNED

SCANNED

JAN 15 2003

JAN 15 2003

Cross-Motion: Yes No

Upon the foregoing papers,

Petitioner, a former police officer, brings this petition seeking to annul a determination of respondents Raymond Kelly, as Police Commissioner of the City of New York and Chairman of the Board of Trustees of the New York City Police Pension Fund Article II, the New York City Police Department and the City of New York, which denied petitioner's application for Accidental Disability Retirement benefits (ADR) causing petitioner to retire with Ordinary Disability Retirement benefits (ODR) with a resultant reduction in benefits to be received by petitioner.

According to the Police Department's line of duty report filed contemporaneously in connection with the incident at issue

MOTION/CASES REFERRED TO JUSTICE

Check One : FINAL DISPOSITION NON-FINAL DISPOSITION

here on August 1, 1997, the supervising officer stated as follows:

[Petitioner] was seated at a desk in the headquarters office. When she moved the chair back and leaned slightly forward, the chair slid out from under her causing her to fall forward, striking her right leg on the desk and falling to the floor. She reported no loss of [consciousness]but complained of soreness to knees, hands and neck. Removed via RMP to hospital. Investigation indicates no dereliction on part of MOS. Statements of witnesses corroborate information given in regards by officer. The conditions in the office appear to be reasonably clean with no visible hazards and do not appear to be a significant contributory factor. Recommend designation as LOD.

Petitioner's own signed statement in the line of duty report stated:

I was seated at the desk and when I moved the chair back and moved my position forward the chair slid backwards out from under me. I fell forward to the floor and struck my leg on the desk on the way down.

Petitioner subsequently submitted an application for ADR, while the Police Commissioner submitted an application for ODR on Petitioner's behalf based upon the August 1, 1997 injury. The Medical Board of the Police Pension Fund Article II ("Medical Board") initially recommended disapproval of both the petitioner's and the Commissioner's applications for benefits. On May 8, 2000, the Medical Board reviewed petitioner's case based on knee surgery petitioner underwent in December 1999. The Medical Board was unable to reach a determination and deferred the matter based on the fact that not enough time had elapsed

since the surgery. On August 3, 2001, the Medical Board found that

Based upon the review of the medical records, the history, the physical examination and clinical findings, it was felt by all the members of this Article II Medical Board that there were significant objective findings precluding the officer from performing the full duties of a New York City Police Officer. In light of that, this Article II Medical Board unanimously recommends approval of the officer's own application for Accident Disability Retirement and disapproval of the Police Commissioner's application for Ordinary Disability Retirement. . . . The competent causal factor being the line of duty injury of August 1, 1997.

The Board of Trustees considered petitioner's application at its meetings on December 12, 2001 and January 9, 2002. At the January 9, 2002, meeting the Board considered two witness statements by police officers which stated that the chair upon which petitioner sat was broken and included photographs by one witness showing the broken chair. Following a discussion of the evidence, the Board of Trustees deadlocked six to six on petitioner's ADR application and as a result of the tie vote petitioner was denied ADR and retired on ODR pursuant to City of New York v Schoeck, 294 NY 559, 569-570 (1945). The petitioner commenced this proceeding seek to annul the Board's denial of ADR.

The Court of Appeals has set forth the standard courts are to apply in proceedings reviewing ADR determinations:

Where, as in the present instance, however, the decision of the board of trustees to deny accidental disability benefits but to grant ordinary disability benefits is

reached in consequence of 6 to 6 tie votes, the standard of judicial review is necessarily different. There has been no factual determination by the board to be subjected to review under the normal substantial evidence standard. Rather, the disposition has been based on a procedural practice, first condoned in Matter of City of New York v Schoeck (294 NY 559, *supra*) and since 1945 observed, if not honored, by continuous use and general acceptance.

Inasmuch as the fact of disability is not in dispute (the finding of disability by the medical board being binding on the board of trustees [Administrative Code, §§ B18-42.0, B18-43.0]), the retired member is entitled at least to ordinary retirement benefits. (Matter of City of New York v Schoeck, 294 NY 559, *supra*) The denial of accidental disability benefits in consequence of the tie vote can be set aside on judicial review only if the courts conclude that the retiree is entitled to the greater benefits as a matter of law. Unless it can be determined as a matter of law on the record that the disability was the natural and proximate result of a service-related accident, the decision of the board of trustees denying accidental disability benefits as a consequence of a tie vote must stand.

;Matter of Canfora v Board of Trustees of Police Pension Fund of the Police Dept of the City of New York, 60 NY2d 347, 351-352 (1983).

In this proceeding, the fact of petitioner's disability is not in dispute as the finding of disability by the Medical Board is binding upon the Board of Trustees. See Administrative Code of the City of New York §§ 13-251, 13-252. The sole issue is whether petitioner's injuries were "accidental" within the meaning of Administrative Code of the City of New York § 13-252. "Although the term 'accident' is not specifically defined by the statute, we adopt the commonsense definition of a 'sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact.'" Matter of Lichtenstein v Board of Trustees

of the Police Pension Fund of the Police Dept of the City of New York, 57 NY2d 1010, 1012 (1982). Although the Medical Board determined that petitioner's injury was accidental, the Board of Trustees is not bound by that finding and is entitled to conduct its own review as to causation. Matter of Starnella v Bratton, 92 NY2d 836, 838 (1998). The "Court cannot direct the board of trustees to accept that finding unless that finding is incontestably correct and there is no room for reasonable difference of opinion." Matter of City of New York v Schoeck, 294 NY 559, 569 (1945).

In this case petitioner's allegations merely reflect a difference of opinion over the Board of Trustees' interpretation of conflicting evidence. The Board was permitted to credit the version of the accident contained in the line of duty report. See Matter of Finazzo v Safir, 273 AD2d 75 (1st Dept 2000). There is no indication in that report that a defect in the chair caused petitioner's injury. The Board was not required to credit the subsequent submissions of petitioner which for the first time alleged such a defect, over the contemporaneous report which included a statement by the petitioner. The First Department's decision in Matter of Russell v Board of Trustees of the New York City Police Pension Fund, Article II, 288 AD2d 19, 20 (1st Dept 2001) is binding precedent in this matter. In that case the Court stated

Petitioner, a police detective, was injured when her wheeled swivel chair, which she was rolling backward to plug in the cord for an electric typewriter, was stopped by a wire on the floor, causing petitioner and the chair to topple over. Such an occurrence is not so out of the ordinary or unexpected as to constitute an accident as a matter of law. Accordingly, the denial of accidental benefits having been the result of a tie vote, the proceeding was properly dismissed. No basis exists for disturbing respondent's determination that petitioner had not proved her claim that her injury was caused by the failure of the chair's backrest due to a loose screw.

Id. (citations omitted)

Similarly in this case, petitioner has failed to sustain her burden of demonstrating that respondents' determination lacked a rational basis. Nor can this court say, in light of the evidence, that the determination of the Medical Board as to causation is incontestably correct as a matter of law.

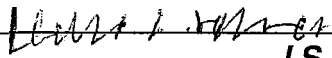
Therefore, it is

ORDERED that the Petition is DENIED and DISMISSED.

This constitutes the decision and order of the court.

Dated: January 2, 2003

ENTER :


J.S.C.