

Altieri v City of N.Y. Civ. Serv. Commn.

2007 NY Slip Op 32726(U)

August 28, 2007

Supreme Court, New York County

Docket Number: 0105563/2007

Judge: Walter Tolub

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

PRESENT: TOLUB
Justice

PART 15

ANTHONY AETIORI

- v -

CITY OF NY

INDEX NO.

105563/07

MOTION DATE

5.11.07

MOTION SEQ. NO.

1

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is denied in accordance
with the accompanying memorandum opinion.

UNFILED JUDGMENT
his judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
11B)

Dated: 5/28/07

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
ANTHONY ALTIERI

Petitioner,

Index No. 105563/07
Mtn Seq. 001

-against-

CITY OF NEW YORK CIVIL SERVICE COMMISSION,
SIMON P. GOULDINE, Chairman, NICHOLAS A.
LAPORTE and RUDY WASHINGTON, Commissioners,
CITY OF NEW YORK DEPARTMENT OF SANITATION,
JOHN J. DOHERTY, Sanitation Commissioner,
and THE CITY OF NEW YORK

Respondents.

-----x
WALTER B. TOLUB, J.:

By this Article 78 application, petitioner seeks an order annulling and vacating Respondent's disqualification of petitioner from the eligible list for appointment as a Sanitation Worker for the New York city Department of Sanitation. Alternatively, petitioner seeks an order remanding the matter to respondents for further appeal and investigation. In addition, petitioner seeks (1) a hearing to allow petitioner to prove he is able to perform the essential requirements of the job of Sanitation Worker; (2) an injunction staying and prohibiting the expiration or termination of New York City Civil Service Examination Number 2025, List Number 6363 pending the determination of the proceeding; and (3) costs and disbursements of this action. Respondents cross-move to dismiss the petition.

Background

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the County Clerk's Desk (Room 115)

Petitioner took and passed the written portion of civil service examination number 2052 for appointment to the title of Sanitation Worker in the Department of Sanitation ("DOS"). An eligible list resulting from examination number 2052 was established on February 18, 2004, and petitioner's name appeared on the eligible list as number 6363.

Respondent DOS began evaluating petitioner in July, 2006.¹ During the course of this evaluation process, petitioner revealed that in May, 2005, he had undergone catheter ablation of atrial flutter of the heart, and in July of 2005, a pulmonary valve replacement. This procedure was necessitated due to a diagnosis of chronic pulmonary regurgitation with RV dilation (Petition, Exhibit L).

On October 11, 2006, Respondent DOS sent petitioner a letter indicating that he was disqualified for appointment based on his medical condition, a dilated and hypokinetic right ventricle (Petition, Exhibit E). On October 14, 2006, petitioner appealed this decision to the Civil Service Commissioner (CSC) (Petition, Exhibit F). Following the review of medical documents and evaluations submitted by both petitioner and respondent (Petition, Exhibits F-M), the CSC affirmed the decision of the DOS. The instant action, challenging the CSC's decision and

¹ Petitioner's name was not high enough on the eligible list to cause him to be immediately summoned for a physical examination in 2004.

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further alleging of violations of Article 15, Section 292 and 296 of the Executive Law, followed.

Discussion

As with any action commenced under Article 78 of the CPLR, the sole concern of this court is whether the respondent's determination was rational (City of New York v. Civil Service Commission, 6 NY3d 855 [2006]). "A reviewing court is not entitled to interfere in the exercise of discretion by an administrative agency unless there is no rational basis for the exercise, or the action complained of is arbitrary and capricious" (Soho Alliance v. New York State Liquor Authority, 32 Ad3d 363 [1st Dept. 2006]; Matter of Pell v. Board of Education, 34 NY2d 222 [1974]).

Contrary to petitioner's assertions, when considering the medical fitness of candidates, an appointing authority "is entitled to rely upon the findings of its own medical personnel, even if those findings are contrary to those of professionals retained by the candidate" (Thomas v. Straub, 29 AD3d 595, 596 [2nd Dept 2006]).

When petitioner began the evaluation process in June of 2006, he submitted multiple medical records from his treating physicians documenting his medical condition and treatment process and progress. This information was reviewed by the Medical Director for the DOS, Dr. Remy Obas. After considering

[* 5]

petitioner's medical records, and after evaluating petitioner's pre-employment examination electrocardiogram, Dr. Obas concluded that notwithstanding the opinions of the petitioner's treating physicians, petitioner had abnormal cardiac findings, thereby warranting a medical disqualification (see, Petition, Exhibit H). This determination was affirmed by the CSC in April of 2007.

There is nothing contained in the record that supports the contention that the decisions made by either the DOS or the CSC to disqualify petitioner for medical reasons were irrational. As such, in the absence of such a showing, this court cannot, and will not, substitute its judgment for that of the commission (see, Medical Malpractice Insurance Association v. Superintendent of Insurance of the State of New York, 72 NY2d 753 [1988], cert denied, 490 US 1080 [1989]. See also, CPLR 7804(3); City of New York v. O'Connor, 9 AD3d 328 [1st Dept 2004]; City of New York v. Civil Service Commission, 6 NY3d 855 [2006]).

Petitioner's claims that respondents violated the State Human Rights Law Executive Law § 296 et seq. ("SHRL"), because of his existing cardiac condition are equally unavailing. A prospective employer is permitted to decline to hire an individual, without violating the SHRL, when the prospective employee's medical condition would prevent him or her from reasonably performing the essential functions of the job being sought (Curcio v. Nassau County Civil Serv. Commission, 220 AD2d

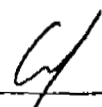
412 [2nd Dept 1995] *appeal denied*, 87 NY2d 806 [1996]; Bellamy v. City of New York, 14 Ad3d 462 [1st Dept 2005]). Petitioner in this application seeks appointment to a job which requires strenuous activity, some of which would have to undoubtedly be conducted in extreme weather conditions. The record simply does not support the contention that the CSC's determination, based on the medical records produced by petitioner and the pre-employment examination undertaken at the direction of the DOS, was violative of the SHRL.

It is this court's opinion that the decision made by the CSC with respect to petitioner's ineligibility due to medical reasons, was rational and not did not violate the SHRL. Inasmuch as there is no further inquiry required of this court, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

This memorandum opinion constitutes the decision and judgment of this Court.

Dated: 8/22/07



 HON. WALTER B. TOLUB, J.S.C.

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 This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or party's representative must appear in person at the Judgment Clerk's Desk (Room 11B)