

**Matter of Brady v Board of Trustees of N.Y.C.
Police Pension Fund**

2008 NY Slip Op 32529(U)

September 12, 2008

Supreme Court, New York County

Docket Number: 0116273/2007

Judge: Joan A. Madden

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

PRESENT: Hon. Joan A. M. Eder
Justice

PART 11

Brady, m

INDEX NO. 116273107

MOTION DATE 6-26-08

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

- v -

Board of Trustees

The following papers, numbered 1 to _____ were read on this motion to/for Article 78
motion

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion per huc is decided in accordance
with the attached memorandum Decision Order + Judgment

FILED JUDGMENT
This judgment has not been entered by the court
and notice of entry cannot be given until it is
signed in person at the Judgment Clerk's Court Room
(11/8)

Dated: Sept 12, 2008

[Signature]
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 11

-----X
In the Matter of the Application of

ROBERT J. BRADY,
Petitioner,

Index No. 116273/07

For a Judgment under Article 78 of the Civil Practice Law
and Rules,

- against -

BOARD OF TRUSTEES NEW YORK CITY POLICE
PENSION FUND and RAYMOND KELLY, AS CHAIR
OF BOARD OF TRUSTEES NEW YORK CITY
PENSION FUND,

Respondents.
-----X

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk.
The office of entry cannot be served. Respondent must
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room 1100).

JOAN A. MADDEN, J.:

Petitioner Robert J. Brady (hereinafter "Brady"), a retired New York City police detective, challenges respondents' denial of his application for accident disability retirement benefits (hereinafter "ADR") based upon the finding that he was not disabled as a result of post traumatic stress disorder arising out the events of September 11, 2001. Respondents the Board of Trustees of the New York City Police Pension Fund (hereinafter "Trustees") and Raymond Kelly, as chair of the Trustees, oppose the petition, which is granted to the extent of remanding the matter to the New York City Police Pension Fund Article II Medical Board (hereinafter "Medical Board") for further proceedings consistent with this decision.

Background

On July 19, 1984, Brady became employed by the New York City Police Department (hereinafter "NYPD"), and pursuant to Administrative Code of the City of New York (hereinafter "Administrative Code") § 13-214 was a member of the New York

City Police Pension Fund. Brady was inducted into the Emergency Services Unit (hereinafter "ESU") and promoted to the rank of detective in February 1988.

On September 11, 2001, Brady responded to the terrorist attacks at the World Trade Center (hereinafter "WTC") as a member of the ESU. He saw the second airplane hit, and witnessed many individuals jump from the buildings. When the South Tower fell, Brady was knocked to the ground, was rushed to and treated at St. Luke's Roosevelt Hospital, and returned to the WTC site. Brady learned that fourteen men from his squad were missing, twelve of whom he worked with for sixteen years.

For three months following the September 11, 2001 attack, Brady worked fifteen to twenty hour shifts searching for survivors, bodies and body parts and recovering evidence. (Respondents' Ex. 1). Subsequently, Brady worked twelve-hour shifts at the site for an average of three days per week, until June 2002. On July 19, 2004, Brady retired from the NYPD, at which time he was on full duty as a member of ESU.

In 2005, the pension law was amended to provide that participation by police officers in the WTC rescue, recovery, or clean up efforts for a minimum of 40 hours is presumptive evidence that any physical or emotional illness was incurred in the performance of their duties as police officers ("the WTC bill"). See Administrative Code § 13-252.1 et seq.¹

¹ The WTC presumption, as codified in Administrative Code § 13-252.1(1)(a) states that "[n]otwithstanding any provisions of this code or of any general, special or local law, charter or rule or regulation to the contrary, any condition or impairment of health caused by 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 minimum of forty hours shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence."

To be entitled to the presumption under the WTC bill, an officer must submit a form supplied by the retirement systems indicating the dates and location of service, and on November 5, 2005, September 27, 2006 and April 19, 2007, Brady filed such forms known as the Notice of Participation in the World Trade Center Rescue, Recovery or Clean-Up Operations. (Respondents' Ex. 1).

On June 6, 2005, Brady struck his daughter and threatened to kill her, her boyfriend and himself. The police came to the scene and removed Brady's firearms and brought Brady to Brunswick Hospital. That night, Brady saw a psychiatrist at the hospital who indicated on the consultation form contained in the hospital report that Brady was suffering from an "adjustment disorder with disturbance of emotion," and "R/O PTSD," [i.e. Rule Out Post Traumatic Stress Disorder (hereinafter "PTSD")] as Brady's diagnosis. (Respondent's Ex. 5). The form also noted the Brady's "symptoms of [] sleep [deprivation], flashbacks, irritability, and some depression s/s since he witnessed the collapse of the twin towers" and Brady's consideration of getting a private psychiatrist. (Id.).

After this incident, Brady began treatment with multiple mental health professionals. On June 20, 2005, Brady saw Dr. Keith Gerber, a Licensed Master of Social Work and Board Certified Expert in Traumatic Stress at the YES Community Counseling Center, who noted symptoms of "hypervigilance, feelings of anger and irritability, difficulty sleeping, nightmares, difficulty concentrating, anhedonia, depersonalization, flashbacks, increased respiration and heart rate and feelings of sadness." (Petitioner's Ex. A, p. 20).

On or about January 24, 2006, Brady filed an ADR based on PTSD.² (Respondents' Ex. 1). At the same time, the Police Commissioner submitted an application to the Medical Board on Brady's behalf for ordinary disability retirement benefits (hereinafter "ODR")(Respondents' Ex. 3).

On March 14, 2006, Brady was diagnosed with PTSD and Major Depressive Disorder at the YES Community Counseling Center. (Respondents' Ex. 6). Starting March 14, 2006, Brady enrolled in the World Trade Center Medical Monitoring program, where his prescription for Lexapro was raised from 15 mg to 20 mg on June 23, 2006. (Petitioner's Ex. A, p. 19). He was also referred to see a board-certified psychiatrist for further psychiatric evaluation and treatment on August 2, 2006. (Id.). Dr. Steven Cole, a professor of Clinical Psychiatry at the State University of New York, conducted a psychiatric evaluation on August 2, 2006, and diagnosed Brady with PTSD and Major Depressive Disorder. Brady received prescriptions for Seroquel 50 mg for treatment with the disorders. (Petitioner's Ex. A, p. 22). On September 6, 2006, Wellbutrin SR 100 mg was added. (Id.)

On August 7, 2006, the Medical Board unanimously recommended disapproval of the application for ADR and the Police Commissioner's application for ODR writing that, "[b]ased on the review of the history, the medical records, the clinical findings, the present complaints . . . there were no significant findings precluding the detective from performing the full duties of a New York City Police Officer." (Respondents' Ex. 3).

²Brady filed a second ADR application on January 24, 2006, to allege a sinus condition due to his work at the WTC on and after September 11, 2001. On October 25, 2006, the Medical Board conducted its own interview and physical examination. On January 10, 2007, the Board of Trustees remanded that application back to the Medical Board for reconsideration in light of new medical evidence.

In support of its decision, the Medical Board noted that a February 7, 2006 report by Dr. Arthur Knour of the Psychological Evaluation Section (hereinafter "PES") of the NYPD indicated that Brady was never referred or evaluated by PES, and that upon his retirement, he was on full duty with firearms. (Respondents' Ex. 4). The Medical Board also relied on the June 6, 2005 report from the Brunswick Hospital Center indicating that Brady had an adjustment disorder, and stated that the Community Counseling Center's March 14, 2006 diagnosis of PTSD was "without significant supporting symptoms" (Respondents' Ex. 3, 6).

In addition, during the Medical Board's August 7, 2006 interview of Brady, the Medical Board remarked that Brady retired in July 2004 on full duty with weapons. The Medical Board described Brady as "fully cooperative, friendly and alert" during the interview and noted that "[h]is mental status examination was unremarkable." However, the Medical Board also noted that Brady was seeing a number of therapists and was taking psychoactive medications.

On November 13, 2006, the Executive Director of the Police Pension Fund remanded Brady's application to the Medical Board due to new evidence consisting of letters from Brady's doctors who diagnosed Brady with PTSD. (Petitioner's Ex. A, at 2).

In an August 4, 2006 report, Dr. Leslie Fine diagnosed Brady with PTSD and Major Depressive Disorder "relating to his involvement in the events of 9/11 and his police work subsequently" and found that "[Brady] is psychiatrically disabled for any employment." (Petitioner's Ex. A, at 17). She reached this conclusion based on symptoms experienced by Brady since September 11th including "nightmares, flashbacks,

fatigue, decreased energy, insomnia with claustrophobia, naps in daytime, marked irritability, sadness, social isolation, anhedonia, reduced activities, difficulties with concentration, attention and memory, feelings of hopelessness and helplessness, feeling of guilt and inadequacy, occasional suicidal ideation, recent weight gain.” (Id.) She also noted that Brady “developed nightmares after November-December 2001, [and] became increasingly irritable and got into arguments and fights, verbal and physical, with friends, family and strangers, which was not like him.” (Id., at 16). In addition, she found that Brady “performed slowly and inaccurately on the clock test . . . [,] subtracted serial 7’s poorly . . . [and] was unable to spell WORLD backwards correctly.” (Id.).

In her report, Dr. Fine wrote that Brady “gave a garbled and disjointed account of his involvement in the events surrounding the World Trade Center ...on 9/11/08,” in which Brady described running across the street to assist people and then getting caught in debris after the second tower collapsed and being sent by ambulance to Roosevelt Hospital and running out of the hospital to return to the site before a psychiatrist could talk to him. (Petitioner’s Ex. A, p. 15). Brady stated that he “felt he had to do it” since “14 guys in his squad were missing.” (Id.) He also described coming out of the Battery Tunnel and seeing body parts and witnessing people jumping out of windows, including four people holding hands while they jumped. Subsequently, Brady worked at the site everyday for three months, and described “feeling like a coward because I ran down West Street while my friends were being crushed.” (Id.)

In his November 9, 2006 report, Dr. Gerber asserted that the symptoms of “hypervigilance, feelings of anger and irritability, difficulty sleeping, nightmares, difficulty concentrating, anhedonia, depersonalization, flashbacks, increased respiration

and heart rate and feelings of sadness . . . [were] a direct result of Mr. Brady's participation in rescue and recovery efforts on September 11, 2001." He concluded that "Mr. Brady meets the DSM IV diagnostic criteria for Posttraumatic Stress Disorder . . . [and] that Mr. Brady is not capable of resuming his duties as a New York City Police Officer, as he continues to experience significant impairment." (Petitioner's Ex. A, p. 20)

In his November 21, 2006 report, Dr. Cole indicated that "Mr. Brady is totally disabled as a result of [PTSD and Major Depressive Disorder], which are directly related to his exposures as a 9/11 responder." (Petitioner's Ex. A, p. 22).

On December 18, 2006, Dr. John T. McCann completed a report that noted Brady's "severe symptoms of delayed onset posttraumatic stress disorder including nightmares, flashbacks, intrusive thoughts, and irritability, and that Brady was misdiagnosed with an adjustment disorder." (Respondents' Ex. 14). Upon administering the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Posttraumatic Stress Diagnostic Scale (PDS), Comprehensive Mental Status Exam and clinical interviews, Dr. McCann concluded that "[Brady] is unable to effectively carry out daily responsibilities and routines without marked difficulty." He found that the "[o]bjective tests and observed symptoms confirm the diagnosis of chronic posttraumatic stress disorder with secondary major depressive disorder . . . , resulting from his employment" and that Brady is "totally and permanently disabled from any type of gainful employment." (Id.)

Dr. McCann noted that when Brady returned to the World Trade Center site after he was knocked to the ground and taken to the hospital, "he immediately felt horrible just being alive when so many of his colleagues perished and that to this day he is haunted by

survivor's guilt." (Id.) According to Dr. McCann's report, "[d]espite his feelings of depression, anxiety, flashbacks, intrusive thoughts, and nightmares, Detective Brady continued to perform his duties." (Id.)

On March 26, 2007, the Medical Board again interviewed Brady who, according to the Board, "appeared somewhat angry and agitated [and that] he thought the Medical Board did not recognize or appreciate the difficulties encountered during the collapse of the World Trade Center and the subsequent rescue efforts." The Medical Board also noted that "[a]ccording to [Brady] his emotional difficulties did not begin during his confrontation with this daughter in June 2005, but the genesis occurred subsequent to September 11, 2001." (Respondent's Ex. 10).

On March 27, 2007, the Medical Board issued a unanimous recommendation reaffirming its previous disapproval of Brady's application for ADR. In its recommendation, the Medical Board referenced the new medical evidence submitted by Brady in support of his position that he was disabled as a result of PTSD arising out of his work at the World Trade Center site. The Medical Board noted that the report of Dr. Steven Cole which found that petitioner was totally disabled "differs from a report previously reviewed" by the Medical Board.³ (Respondent's Ex. 10). Nonetheless, the Medical Board found that "there were no significant objective findings precluding the retired detective from performing the full duties of a New York City Police Officer." (Id.) The Medical Board also rejected the application for ODR.

In denying Brady's application, the Medical Board relied again on the February 7, 2006 report by Dr. Arthur Knour of the PES section of the NYPD indicating that Brady

³In fact, as indicated herein, all four of the mental health professionals who evaluated Brady found that his PTSD prevented him from performing police work.

was never referred or evaluated by PES, and that upon his retirement, he was on full duty with firearms. The Medical Board also stated that petitioner continued to work in Emergency Services until he retired in 2004.

On August 8, 2007, based upon the recommendation of the Medical Board, the Trustees issued a final determination to deny the application for ADR and ODR. (Respondents' Ex. 15).

Brady subsequently commenced this Article 78 proceeding, seeking an order annulling respondents' determination denying him ADR as against weight of the substantial evidence, arbitrary and capricious, and an abuse of discretion. Brady argues that the Medical Board ignored crucial evidence presented by him, including the opinions of four mental health professionals that Brady suffered from PTSD which prevented him from performing police work, and that Trustee's determination denying his application for ADR is not supported by credible evidence. Brady contends that Dr. Knour's statement indicating that Brady was never referred or reviewed by the PES provides an insufficient basis for denying him benefits and that by the time he became fully disabled he already retired from the police force, so that PES was unavailable to him.⁴

⁴Brady also points out that only Dr. Julius Mendel on the Medical Board is a mental health professional, and the other two doctors who made a determination on Brady's application do not specialize in psychiatry or psychology, but specialize in physical medicine and rehabilitation, and in orthopedic surgery. However, the Medical Board need not consist of members who were mental healthcare specialists to render a rational determination. Christian v. New York City Employees' Retirement System, 83 A.D.2d 507, 509 (1st Dept 1981), aff'd, 56 NY2d 841 (1982) (holding that the court does not attach any legal significance to the field that the members of the medical board practice, but rely on the fact that "qualified physicians are able to make an informed medical judgment on the basis of information submitted to them, including the opinions of specialists in area other than their own.")

Brady also argues that as he participated in the rescue and recovery efforts of September 11, 2001, under the WTC bill, he is afforded the presumption that his disability was caused by his performance of duties as a police officer.

In opposition, respondents argue that since the Medical Board considered all of the objective medical evidence submitted by Brady, and has the final authority to resolve conflicts in medical evidence, the denial of the ADR was supported by credible medical evidence and was neither arbitrary nor capricious. In particular, respondents contend that the Medical Board's initial finding on August 7, 2006, took all available information into consideration and properly denied the application based on evidence that Brady was never referred or evaluated by PES and upon retirement, he was on full duty with firearms. They also point out that the Medical Board relied on the June 6, 2005 Brunswick Hospital Center report that indicated an impression that Brady had an adjustment disorder.

Moreover, respondents point out that the Brunswick Hospital Center report, which is dated more than three and half years after the WTC tragedy and nearly a year after Brady's service retirement, was the first record that Brady sought any medical attention. Respondents assert that the denial of benefits was appropriate since, as noted by the Medical Board, Brady continued to work in ESU until his 2004 retirement with firearms and was employed full-time until 2006.

Respondents further note that Medical Board rejected the March 14, 2006 Community Counseling Center's diagnosis of PTSD on the grounds that it did not provide significant supporting symptoms.⁵ Finally, respondents argue that since they

⁵ While respondents also argue that the Medical Board's own assessment found Brady's mental status examination "unremarkable," such assessment is not entitled to judicial deference since although the Medical Board interviews the applicant it does not perform

found that Brady was not disabled, the presumption under the WTC bill that any disability caused by performance of his duties as a police detective is irrelevant.

Discussion

In an Article 78 proceeding challenging a disability determination, the Medical Board's determination will be sustained unless it lacks a rational basis, or is arbitrary or capricious. See Matter of Borenstein v. New York City Employees' Retirement System, 88 N.Y.2d 756, 760 (1996); Matter of Canfora v. Board of Trustees of Police Pension Fund of Police Department of City of New York, 60 N.Y.2d 347, 351 (1983). Ordinarily, the Medical Board's disability determination will not be disturbed if it is supported by substantial evidence which, in the context of disability cases, has been construed "to require some credible evidence." Matter of Borenstein v. New York City Employees' Retirement System, *supra* at 760; Matter of Rubiano v. New York City Employees' Retirement System, 268 A.D.2d 261 (1st Dept 2000). Credible evidence is "evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered . . . [and] must be evidentiary in nature and not merely a conclusion of law, nor mere conjecture or unsupported suspicion." Matter of Meyer v. Board of Trustees of the New York City Fire Department, 90 N.Y.2d 139, 146-147 (1997).

Once the Medical Board certifies that an applicant is not medically disabled for duty, the Board of Trustees must accept that determination and deny the application. See Matter of Borenstein v. New York City Employees' Retirement System, *supra* at 760.

Where the medical evidence is conflicting, it is the sole province of the Medical Board to resolve any conflicts. *Id.* However, determinations of the Medical Board and the Board

a full psychological examination. See McAdams v. Kelly, 117 Misc3d 1112 (A), *2, fn 5, 2007 WL 2965402 (Sup. Ct. N.Y. Co. Oct. 2, 2007), 2007 NY Slip Op. 51938 (U)

of Trustees have been annulled and the matter remanded for further review where the medical issues presented by a petitioner were not adequately addressed or when the medical evidence did not sustain the determination. See Matter of Rodriguez v. Board of Trustees of New York City Fire Department, 3 A.D.3d 501 (2d Dept 2004).

Under this standard, the court concludes that the record reveals that the Medical Board failed to adequately address crucial medical evidence concerning Brady's diagnosis of PTSD by four different mental health professionals, who each concluded that as a result of the PTSD, Brady was disabled from performing police work.

While the Medical Board possesses the sole authority to resolve any issues concerning conflicting medical evidence (Matter of Demarco v. New York City Employees' Retirement Systems, 211 A.D.2d 594 (1st Dept 1995); Matter of Cassidy v. Ward, 169 A.D.2d 482 (1st Dept 1991)), the Board must at least rationally evaluate the evidence submitted by a petitioner. See McAdams v. Kelly, 117 Misc3d 1112 (A), 2007 WL 2965402 (Sup. Ct. N.Y. Co. Oct. 2, 2007), 2007 NY Slip Op. 51938 (U) (holding that the Medical Board's summary denial of petitioner's application for ADR benefits based on his PTSD resulting from his assignment at the WTC site was arbitrary and capricious). See Weller v. Kelly, Index No. 109357/2006, (Sup Ct NY Co. February 23, 2007), Slip Op. at 11 (holding that the Medical Board is not permitted to "cherry pick portions of letter and reports it received and to disregard information, without inclusion or comment, that do not support its position.")

In finding Brady was not incapacitated to fulfill his service as a NYPD officer, the Medical Board noted that Brady was never referred to or reviewed by PES, he was on full duty with firearms when he retired from the NYPD and he continued to work in ESU

until his retirement in 2004. However, although the Medical Board's March 27, 2007 recommendation referenced the reports of Dr. Fine, Dr. Gerber, Dr. Cole and Dr. McCann, and indicated that they all concluded that Brady suffered PTSD, it failed to take into account these reports or provide a reason for disregarding them. Furthermore, the Medical Board failed to take into account that certain of the reports noted that Brady started exhibiting symptoms of PTSD shortly after the events of September 11, 2001.

In addition, while the four doctors concluded that Brady was unable to fulfill the job duties of a police officer due to PTSD, the Medical Board only acknowledged Dr. Cole's opinion that Brady is totally disabled as a result of PTSD, and failed to provide an explanation for ignoring Dr. Cole's report or that of the other three doctors.

Next, although the June 6, 2005 report from Brunswick Hospital stated that its impression was that Brady suffered from an adjustment disorder, the report also indicated that the examining physician reached no conclusion as a diagnosis of PTSD, and stated that it needed to be ruled out. The Medical Board did not specifically mention the Brunswick Hospital report in connection with its March 26, 2007 recommendation. Notably, Dr. McCann concluded that Brunswick Hospital report misdiagnosed Brady as suffering from an adjustment disorder, and the Medical Board does not address this issue.

Furthermore, although Brady was not seen by PES prior to retirement, Dr. Fine and Dr. McCann noted in their reports that Brady experienced some negative psychological effects relating to his participation in rescue and clean-up efforts at the World Trade Center site, while still employed by the NYPD. Moreover, Dr. McCann diagnosed Brady with delayed onset of PTSD. The Medical Board, however, failed to address this evidence in concluding that Brady was not disabled.

Additionally, respondents' position that the Community Counseling Center's March 14, 2006 diagnosis of PTSD lacks significant supporting symptoms is belied by the Center's report, which stated that Brady had feelings of sadness and stress and that he suffered sleep disorders. (Respondents' Ex. 6). Noting that although there were no suicidal or homicidal indicators, the Center recommended close monitoring because Brady exhibited periods of intense anger, and recommended that he participate in individual cognitive behavioral therapy with the "focus of decreasing post trauma symptoms and improving community functioning ... [with] [o]n-going assessment ...by assigned worker for indicators of Post Traumatic Stress Disorder and Major Depressive Disorder." Although the report stated that Brady was still employed full-time at the time of the evaluation, it evidences that Brady was suffering from symptoms suggesting serious psychological problems.

Thus, as the Medical Board disregarded, without any explanation, crucial medical evidence submitted by Brady indicating he was suffering from PTSD, and as this medical evidence is supported by the nature and extent of Brady's involvement in the rescue and recovery efforts at the World Trade Center site, this matter must be remanded to the Medical Board for a new evaluation of Brady's application for ADR. See Weller v. Kelly, Index No. 109357/2006, Slip Op. at 10 (remanding matter to Medical Board for further evaluation of petitioner's application for ADR where "critical evidence was overlooked, key facts were incorrect and no explicit reasons were given for any of the Medical Board's three disapprovals. Nor were implicit reasons readily apparent").

Finally, as the Medical Board did not find that Brady "physically or mentally incapacitated for the performance of city-service," it was not required to determine

whether the condition was a “proximate and natural result of an accidental injury received in such city service.” Matter of Meyer v. Board of Trustees of the New York City Fire Department, 90 N.Y.2d at 144. The court notes, however, that it appears from the record that if Brady were found to be disable, that the presumption under the WTC bill that such condition or impairment of health⁶ “was incurred in the performance or discharge of duty and [was] the natural and proximate result of an accident,” (See Administrative Code §13-252.1), would apply under the circumstances here.

Conclusion

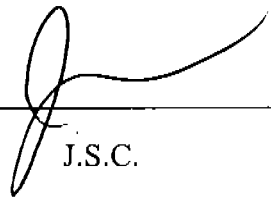
In view of the above, it is

ORDERED and ADJUDGED that the petition is granted to the extent of annulling the findings of the Medical Board and the Board of Trustees with respect to the disapproval of Brady’s application for ADR; and it is further

ORDERED and ADJUDGED that the petition is granted to the extent of directing that the Medical Board conduct a further evaluation of Brady’s application for ADR and issue an expanded determination on the subject application and, upon issuance of an expanded determination, the Medical Board shall present the expanded determination to the Board of Trustees, and the petition is otherwise denied.

DATED: September 12, 2008

UNFILED JUDGMENT
This judgment has not been entered by the court and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1153)



J.S.C.

⁶ Under the WTC bill, a qualifying condition or impairment of health includes “[d]iseases of the psychological axis, including posttraumatic stress disorder, anxiety, depression or any combination of such conditions.” Administrative Code § 13-252.1(c)(iv).