

Matter of Patterson v Kelly

2009 NY Slip Op 31549(U)

July 10, 2009

Supreme Court, New York County

Docket Number: 113653/08

Judge: Marilyn Shafer

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

PRESENT: Hon. Marilyn Shaffer

PART 8

Index Number : 113653/2008

PATTERSON, JAMES

VS.

KELLY, RAYMOND

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

in this motion to/for _____

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 *is decided in accord with the annexed memorandum.*

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 Judgment Clerk's Desk (Room 141B).

Dated: 7/10/09

MARILYN SHAFFER
J.S.C.

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 8

-----X
In the Matter of the Application of
JAMES PATTERSON

Petitioner,

Index No.
113653/08

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

-against-

RAYMOND KELLY, as the Police Commissioner
of the City of New York, and as Chairman
of the Board of Trustees of the Police
Pension Fund, Article II, THE BOARD OF
TRUSTEES of the Police Pension Fund,
Article II, NEW YORK CITY POLICE DEPARTMENT
and THE CITY OF NEW YORK,

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 Judgment Clerk's Desk (Room
1074)

Respondents.

-----X
Shafer, J.:

Petitioner James Patterson (Patterson) seeks a judgment,
pursuant to CPLR Article 78, reviewing and annulling the action of
respondents that denied him an accident disability retirement (ADR)
allowance under General Municipal Law § 207-k (the Heart Bill), and
declaring said action to be arbitrary, capricious, unreasonable and
unlawful; and directing and ordering respondents to retire
Patterson with an ADR allowance retroactive to the date of his
ordinary disability retirement (ODR), plus interest thereon; or in
the alternative, directing that respondent the Board of Trustees of
the Police Pension Fund, Article II (the Board of Trustees) allow
Patterson to present testimony at a hearing held before it, in
order to prove his entitlement to an ADR.

Patterson further seeks an order, pursuant to CPLR 2307 (a), directing respondents to serve and file: (a) all documents submitted to the Board of Trustees in connection with his retirement; (b) copies of the minutes of each meeting of the Board of Trustees wherein it considered or acted upon his retirement application; and (c) copies of any and all medical records, reports or notes relating to Patterson which are on file with the Article II Pension Fund and/or with respondent the New York City Police Department (NYPD).

Patterson was appointed to the uniformed force of the NYPD on January 13, 1992, and he served continuously as a police officer until his ODR. Prior to joining the NYPD, Patterson passed all physical and mental examinations administered by the NYPD, demonstrating that he was fit to perform full duties as a police officer.

On October 17, 2005, a doctor examined Patterson and found that his heart was enlarged. On November 8, 2005, Patterson sustained a line of duty injury while assigned to Hurricane Katrina relief efforts. He became ill when he returned to New York, and was diagnosed with mycoplasmic pneumonia from exposure to contaminated water. Thereafter, a series of medical examinations, tests, evaluations and treatments followed, related to his heart, among other things.

On January 27, 2006, the Medical Board Police Pension Fund,

[* 4]

Article II (the Medical Board) interviewed and examined Patterson. Based on a review of his history, the medical records and all findings, the Medical Board unanimously found that there were significant objective findings precluding Patterson from performing the full duties of a police officer. The Medical Board recommended approval of the Police Commissioner's application for ODR and disapproval of Patterson's application for ADR. It diagnosed Patterson with a markedly impaired left ventricular function related to cardiomyopathy.

Further medical exams and treatments followed. On April 3, 2006, Dr. David Ramos wrote a letter opining that, because it was possible that Patterson's illness resulted from his performing his duties as a police officer to the best of his ability, "[i]t seems only reasonable that he should be assisted by the State, as he will no longer be able to really be engaged in gainful employment."

On July 21, 2006, the Medical Board again interviewed and examined Patterson and reaffirmed its previous decision recommending approval of the Police Commissioner's application for ODR and disapproval of Patterson's application for ADR under the provisions of the Heart Bill. The Medical Board's final diagnosis was idiopathic cardiomyopathy and congestive heart failure.

In an April 9, 2007 letter, after examining Patterson, Dr. Raymond Catania stated that his situation "may fall under the provisions of the Heart Bill and merit reconsidering Officer

[* 5]

Patterson for [ADR]." On November 16, 2007, the Medical Board again interviewed and examined Patterson, and reaffirmed its previous decision recommending ODR rather than ADR.

In a September 18, 2008 letter to Patterson, the New York City Police Pension Fund stated that, at its June 11, 2008 meeting, the Board of Trustees denied his application for ADR and reaffirmed its prior determination, such that his retirement status remained ODR.

Patterson argues that respondents' decision denying his application for an ADR pension is arbitrary, capricious, unreasonable, unlawful and contrary to law, in that: (i) the Medical Board failed to use the proper legal test of entitlement to an ADR pension applicable in the circumstances; (ii) the Medical Board's decision was not based on any competent or substantial evidence, and was contrary to competent evidence establishing that he had sustained an ADR disability; and (iii) the Board of Trustees failed to provide Patterson with a fair and reasonable opportunity, by way of notice and hearing or otherwise, to establish his entitlement to an ADR pension.

Pursuant to the Heart Bill, an NYPD police officer is entitled to ADR benefits if, having passed a physical upon entering the NYPD, he or she subsequently develops a disabling heart ailment that can be shown to be related to stress or the performance of official job duties. *See Matter of Goldman v McGuire*, 101 AD2d 768 (1st Dept 1984), *affd* 64 NY2d 1041 (1985); General Municipal Law §

207-k.

Under the Heart Bill, a disabling heart condition is presumed to have been incurred in the performance of duty, unless the contrary is proven by competent evidence. "[T]he theory behind the bill ... is not only that heart conditions are an occupational hazard for police officers and firemen, but also that this is a unique condition which generally is not the result of any particular incident but involves a gradual and progressive degeneration as a result of the continuous stress and strain of the job." *Uniformed Firefighters Assn., Local 94, IAFF, AFL-CIO v Beekman*, 52 NY2d 463, 471 (1981).

Patterson maintains that he is entitled to ADR benefits under the Heart Bill, because he has shown that he is disabled due to a disease of the heart that was caused by the stress of police work. He further argues that respondents have not rebutted the Heart Bill's presumption that he incurred the heart disease in the performance of his duties, such that denial of ADR benefits was arbitrary, capricious and legally insufficient.

Patterson argues that action by this court is warranted. He states that, although courts are reluctant to substitute their judgments for those of administrative boards, the court can intervene where such a body acts arbitrarily, capriciously or without a rational basis on an application for ADR. According to Patterson, respondents have acted improperly as a matter of law,

such that he asks the court to remand the matter for further consideration under the appropriate legal standards.

Respondents argue that, in reaching its decision in the instant case, the Medical Board not only considered all of the objective medical evidence from outside sources submitted by Patterson, but also interviewed and examined him several times. They state that the Medical Board determined, based upon competent evidence, that Patterson's heart disease was not stress-related, thereby rebutting the Heart Bill's presumption that a police officer's disabling heart condition is the result of work-related stress.

Respondents maintain that the medical records that the Medical Board reviewed clearly show that Patterson has cardiomyopathy without coronary artery disease or significant pre-existing hypertension. They assert that courts have found the Heart Bill's presumption to be rebutted in cases such as this, where there is competent medical evidence that the applicant, although suffering from a disabling heart condition, does not have significant hypertensive heart disease or coronary artery disease, which are the medically recognized indicia of stress-related heart disease. *Matter of Vallas v Safir*, 304 AD2d 353 (1st Dept 2003); *Tardibuono v Board of Trustees of N.Y. City Police Dept., Art. II Pension Fund*, 240 AD2d 327 (1st Dept 1997).

Respondents further state that the Board of Trustees acted

properly in affirming the Medical Board's finding. Generally, "it is neither arbitrary nor capricious for the Board of Trustees to rely upon the Medical Board's conclusion that a disability is not causally connected to an individual's line of duty injuries," where the recommendation of the Medical Board is based on some credible medical evidence. *Matter of Carbone v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 242 AD2d 530, 531 (2d Dept 1997).

Judicial review of the Trustee's determination is a limited one. "As is well established, courts cannot weigh the medical evidence or substitute their own judgment for that of the Medical Board." *Matter of Appleby v Herkommer*, 165 AD2d 727, 728 (1st Dept 1990). A court should reverse a determination of the Board of Trustees only if it finds such determination to be "wholly irrational." *Id.* at 728, quoting *Matter of Whitton v Spinnato*, 143 AD2d 274, 275 (2d Dept 1988).

This court finds that there is sufficient evidence in the record to rebut the evidentiary presumption afforded to Patterson by the Heart Bill. The Medical Board determined that his disability was not caused by work-related stress, given the absence of both hypertension and coronary artery disease. The Heart Bill's presumption has been overcome in cases like the instant one, involving a diagnosis of cardiomyopathy without evidence of significant stress-related causation. *See Matter of Vallas v*

Safir, 304 AD2d 353 (1st Dept 2003); Matter of Welch v Safir, 293 AD2d 295 (1st Dept 2002).

Thus, respondents' determination that the Heart Bill's presumption of work-related causation for Patterson's heart disease was rebutted, and their denial of ADR benefits to Patterson, were not arbitrary or capricious.

Accordingly, it is

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

This constitutes the decision and judgment of the court.

Dated: 1/10/09

ENTERED
J.S.C.

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 Judgment Clerk's Desk (Room 1413).