

**Vaughn v Medical Bd. of the Police Pension Fund
Art. II**

2010 NY Slip Op 33287(U)

November 23, 2010

Sup Ct, NY County

Docket Number: 105312/10

Judge: Saliann Scarpulla

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

PRESENT: Saliann Scarpulla
Justice

PART 19

Index Number : 105312/2010
VAUGHN, JULIUS
VS.
MEDICAL BOARD OF THE POLICE PENSION
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the accompanying decision/order.

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

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: 11/23/10

Saliann Scarpulla
SALIANN SCARPULLA, S.C.

Check one: FINAL DISPOSITION - NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X
JULIUS VAUGHN,

Petitioner,

-against-

Index No.: 105312/10

Submission Date: 9/29/2010

MEDICAL BOARD OF THE POLICE PENSION FUND
ARTICLE II, BOARD OF TRUSTEES OF THE POLICE
PENSION FUND ARTICLE II, AND THE NEW YORK
CITY POLICE DEPARTMENT,

DECISION AND ORDER

Respondents.

-----X
For Petitioner:
Levine & Gilbert
115 Christopher Street
New York, NY 10014

For Respondents:
Michael A. Cardozo
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

Papers considered in review of this petition:

Notice of Petition/Petition
Answer

UNFILED JUDGMENT
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HON. SALIANN SCARPULLA, J.

In this Article 78 proceeding, petitioner Julius Vaughn ("Vaughn") challenges the determination of respondent Board of Trustees of the Police Pension Fund Article II ("Board of Trustees") denying his application for accident disability retirement benefits pursuant to NYC Administrative Code §13-252.

Vaughn was on duty as a New York City Police Department Traffic Officer on October 5, 1995 when he was struck by a vehicle making a left turn on Second Avenue from 35th Street. He injured his right knee and was treated for a torn medial meniscus.

He underwent surgery, was out of work for approximately six months, and then returned on limited duty and ultimately to full duty.

On August 19, 1998, on 30th Street between Seventh and Sixth Avenues, Vaughn was injured by a person resisting arrest, causing Vaughn to strike his right knee. He underwent surgery to his right lateral meniscus and was out of work for approximately eight months.

On February 10, 2004, Vaughn re-injured his right knee. According to the line of duty report, Vaughn was injured when entering an NYPD van, when his "foot slipped off the running board" and he hit his knee on the van door.

On October 7, 2008, Vaughn filed an application for accident disability retirement benefits ("ADR"), claiming that he was disabled from performing police duties because of right knee pain. He listed his February 10, 2004 injury as the cause of his disability. On December 4, 2008, the NYPD Medical Division issued a memorandum to the Supervising Chief Surgeon recommending that Vaughn be evaluated to determine whether he was disabled from performing police duties due to his knee.

Thereafter, on October 30, 2009, respondent Medical Board of the Police Pension Fund Article II ("Medical Board") reviewed Vaughn's ADR application and an application for Ordinary Disability Retirement benefits ("ODR"), which was filed on his behalf at the direction of the Police Commissioner. The Medical Board reviewed line of duty reports and medical reports and conducted its own interview and physical

[* 4]

examination of Vaughn. The Medical Board determined that as the result of the line of duty injury of February 10, 2004, Vaughn was disabled from performing full duty police work. The Medical Board recommended that the Board of Trustees approve the ADR application and disapprove the application for ODR.

On February 25, 2010, the Board of Trustees denied Vaughn's ADR application in a 6-6 tie vote, finding that Vaughn failed to demonstrate that his February 10, 2004 injury was caused by a work related accident.

Vaughn now commences this Article 78 proceeding challenging the denial of his application, arguing that the Board of Trustees' determination was arbitrary and capricious. Vaughn claims that his injury was caused by a work related "accident," in that his fall occurred as the result of a sudden, unexpected, fortuitous event. He maintains that although not stated in the line of duty report from his February 10, 2004 accident, that fall occurred because he slipped on ice, and slipping on ice constitutes a sudden, unexpected, fortuitous event sufficient to entitle him to ADR benefits.¹ Vaughn further argues that, in any event, he injured his right knee in two prior work related accidents, and therefore, even if his February 10, 2004 injury was not a work related "accident," it was an exacerbation of his two prior work related accidents, sufficient to entitle him to ADR benefits.

¹ Vaughn alleges that in the Mercy Medical Center Emergency Physician Record from February 13, 2004 in the description of his February 10, 2004 accident it is written "right knee hit into car," car is crossed out, and it is written "van, as foot slipped on ice." No other evidence was submitted indicating that Vaughn was injured because he slipped on ice.

In opposition, the respondents argue that the Board of Trustees' determination was not arbitrary or capricious. The Board of Trustees fully reviewed Vaughn's case and properly concluded that his disability was caused by his February 10, 2004 injury and not by his two prior accidents, and that the February 10, 2004 injury was not a work related "accident."

Discussion

Administrative Code §13-252 provides that an applicant is entitled to accident disability benefits if medical examination reveals that incapacitation was suffered "as a natural and proximate result of an accidental injury received in such city service, while a member, and that such disability was not the result of willful negligence on the part of such member."

In an Article 78 proceeding challenging a disability determination, the Board of Trustees' finding will be sustained unless it lacks rational basis, or is arbitrary or capricious. *See Matter of Canfora v. Board of Trustees*, 60 N.Y.2d 347 (1983). The disability determination will not be disturbed if it is based on "some credible evidence." *Matter of Borenstein v. New York City Emples. Ret. Sys.*, 88 N.Y.2d 756, 760 (1996). A 6-6 tie vote can be set aside on judicial review only if it can be determined, as a matter of law, that the disability was the natural and proximate result of a service related accident. *See Matter of Canfora v. Board of Trustees*, 60 N.Y.2d 347 (1983); *Matter of Hallihan v. Ward*, 169 A.D.2d 542 (1st Dept. 1991). An accident is defined as a "sudden, fortuitous

6] mischance, unexpected, out of the ordinary, and injurious in impact.” *Matter of Lichtenstein v. Board of Trustees*, 57 N.Y.2d 1010, 1012 (1982). It is only when the circumstances admit but one inference that the court may decide as a matter of law that that inference should be drawn. *Matter of Jung v. Board of Trustees*, 228 A.D.2d 681, 681 (2nd Dept. 1996).

Here, Vaughn has failed to prove that the Board of Trustees’ determination was arbitrary or capricious. The record shows that the determination was based upon a comprehensive review of the matter by the Medical Board and the Board of Trustees. Further, based on the evidence presented, including hospital records, medical reports, and line of duty reports, it cannot be concluded, as a matter of law, that the disability was the natural and proximate result of a service related accident. *See Regan v. Board of Trustees*, 226 A.D.2d 731 (2nd Dept. 1996); *Bartsch v. Board of Trustees*, 142 A.D.2d 577 (2nd Dept. 1988).

In accordance with the foregoing it is

ORDERED and ADJUDGED that petitioner Julius Vaughn’s petition is denied and the proceeding is dismissed; and it is further

UNFILED JUDGMENT

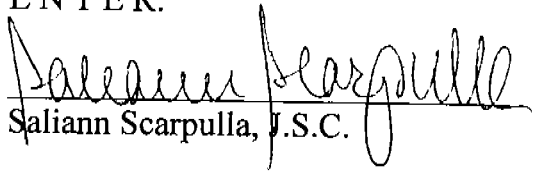
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk’s Desk (Room 141B).

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: New York, New York
November 23, 2010

ENTER:


Saliann Scarpulla, J.S.C.

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