[* 1]

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

PRESENT: HON. ANIL C. SINGH SUPREME COURT JUSTICE Justice PART 61

Index Number : 114923/2010

CAMILLITI, COSMO

VS.

KELLY, RAYMOND

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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 accordance with the annexed memorandum decision and order

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

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: 7/22/11

HON. ANIL C. SINGH J.S.C.
SUPREME COURT JUSTICE

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 61

----------X

In the Matter of the Application of
COSMO CAMILLITI,

Petitioner,

-against-

Index №
114923/10

RAYMOND W. 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 and The Board of Trustees of the Police Pension Fund, Article II, NEW YORK CITY POLICE DEPARTMENT,

Respondents,

For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules.

----------X

ANIL SINGH, J.:

Petitioner Cosmo Camilliti (Camilliti) brings this Article 78 petition, challenging the final determination of respondents Raymond W. 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 and The Board of Trustees of the Police Pension Fund, Article II, New York City Police Department, denying his application for an Accident Disability Retirement (ADR) allowance pursuant to Administrative Code of the City of New York (Administrative Code) § 13 - 252. Petitioner seeks a judgment annulling

respondents' denial of his application on the grounds that it was arbitrary, capricious, and unlawful, and directing respondents to retire petitioner with an ADR allowance retroactive to the date of his retirement, together with interest and costs, or in the alternative, for an order remanding this matter to respondents for reconsideration. Pursuant to CPLR 2307 (a), petitioner also seeks an order directing the production of certain documents, minutes and medical records pertaining to petitioner which are maintained by, or are under the control of the various respondents.

Petitioner was appointed to the position of uniformed police officer with the New York City Police Department (NYPD) on October 15, 1990. Prior to his appointment, petitioner was found to be medically and physically qualified for the position in which he then served continuously until the time of his retirement. It is undisputed that Camilliti was a contributing member of the Police Pension Fund, as provided for under section 13 - 214 of the Administrative Code.

During his years as a police officer, Camilliti reported four line of duty (LOD) incidents, three pertaining to his back and one pertaining, primarily, to his right knee. Camilliti's first reported LOD injury occurred on September 12, 2000, when he stepped off of a curb while on duty and felt a sharp pain in his back. Approximately eight months later, Camilliti reported a second LOD injury.

According to the second LOD report, Camilliti was lifting boxes in order to access a bicycle in an NYPD garage when he suddenly felt a pull in his back, followed by substantial pain and discomfort in his back and right leg. He was treated at North Shore Hospital for an "acute lumbar sprain." On September 12, 2003, Camilliti reported his third LOD injury. He reportedly slipped while descending stairs from a police launch, causing him pain in his lower back and left leg. Camilliti reported his fourth and final LOD injury following his August 22, 2007 fall from a worn step in the area of a security desk landing at his assigned precinct. He described initially feeling only slight pain to his back and right knee, followed immediately by excruciating pain to his back and right knee when he tried to walk (*see* Respondents' Exhibits 2 - 5, Line-of-Duty Injury Reports). Following this last injury, Camilliti sought treatment for both his back and knee from a series of doctors, and was placed and/or continued on either "restricted duty" or "limited capacity duty" during that time. On February 28, 2008, petitioner applied for ADR, pursuant to Administrative Code § 13 - 252, based on the conditions of his right knee and lower back, stating that these injuries rendered him unable to perform his full police duties.

Camilliti ultimately retired from the NYPD on a service retirement pension, effective April 8, 2008, and on April 15, 2008, the Police Commissioner submitted

an application for Ordinary Disability Retirement (ODR) on his behalf. The Police Pension Fund Medical Board (Medical Board) evaluated his applications for ADR and ODR on four separate occasions, June 18, 2008, December 10, 2008, June 24, 2009, and March 10, 2010 (*see* Respondents' Exhibits S, W, DD, and HH). On each of the four occasions, the Medical Board reviewed the medical documents submitted in support of the disability applications, and conducted its own interviews and physical examinations of Camilliti. Three times they denied his applications, and once, on June 24, 2009, the Medical Board deferred its final recommendation pending receipt of additional medical documentation from a treating physician. In July 2010, the Board of Trustees denied petitioner's ADR application and sent a letter advising him of his rights under Article 78 of the CPLR. Camilliti commenced the instant Article 78 proceeding, petitioning this court for a judgment only with respect to the denial of the ADR application. Both the petition and the respondents' denial of ADR are based on the following course of events.

On September 4, 2007 (two weeks after the August 22, 2007 LOD injury), Police Surgeon Cucco placed Camilliti on "limited capacity" duty due to a sprained right knee. Dr. Cucco also restricted Camilliti from physical altercations, stairs and from operating a departmental vehicle. He scheduled Camilliti's reevaluation and

authorized an orthopedic exam, a follow-up visit and an x-ray for his right knee (Petitioner's Exhibit C).

On September 12, 2007, Camilliti was examined by orthopedic surgeon Dr. Sal Inserra, who noted tenderness and a painful range of motion at the medial and lateral joint line, and diagnosed him as suffering from synovitis[1] of the right knee, internal derangement due to a twisting injury, and recurrent pain and stiffness (Petitioner's Exhibit D). Dr. Inserra requested an authorization for an MRI of the right knee. The MRI, which was authorized and performed on September 17, 2007, revealed joint effusion,[2] tears of the medical meniscus, and degenerative arthritis within the patellofemoral and medial joint compartments. Dr. Inserra conducted a follow-up examination on October 3, 2007, and requested authorization to perform arthroscopic surgery on petitioner's right knee. On October 4, 2007, Dr. Cucco placed Camilliti on "restricted duty," and referred him to NYPD orthopedic surgeon Russell Miller, M.D., who examined Camilliti twice before authorizing knee surgery. In each of his reports, Dr. Miller noted similar clinical findings, including clicking and the significant degeneration of the medial meniscus, and in

---

[1]Synovitis is the inflammation of a synovial membrane usually with pain and swelling of the joint (www. nlm. nih.gov /medlineplus/mplusdictionary.html)

[2]Joint effusion refers to increased fluid in the synovial cavity of a joint (Stedman's Medical Dictionary, 28th ed.)

each report, stated his prognosis as "fair" (Respondent's Exhibits 25, 27).

In November 2007, Camilliti saw another orthopedic surgeon, Dr. Jimmy Lim, whose, albeit unsigned, report contains a diagnosis of a meniscal tear and internal derangement of the right knee, along with positive findings of circumference discomfort and clicking in the same knee. The findings were negative, however, as to effusion, swelling, and laxity (valgus or varus[3]). Also negative were the results of the McMurray, Lachman and Pivot-shift tests,[4] and neither compartment[5] nor neurovascular problems were noted. Dr. Lim recommended pain medication and physical therapy treatment, and stated that arthroscopic surgery was the only way to assess the damage to the meniscus (Respondent's Exhibit 39).

Camilliti returned to Dr. Inserra who performed the arthroscopic surgery on December 19, 2007. The post-operative diagnosis was of a "complex tear, body of the posterior horn of the medial meniscus, right knee with large entrapped

---

[3]Valgus means to turn outward, and varus means to turn inward (www. nlm. nih.gov /medlineplus/mplusdictionary.html).

[4]McMurray's test is a rotating maneuver of the tibia on the femur to rule out a meniscal tear. Lachman and Pivot-shift tests are maneuvers to detect a tear or deficiency in the anterior cruciate ligament, commonly referred to as "ACL" (Stedman's Medical Dictionary, 28th ed.).

[5]Compartment (syndrome) is a condition in which increased pressure in a confined anatomic area adversely affects circulation, threatening the function and viability of the structures in that area (Stedman's Medical Dictionary, 28th ed.)

pedunculated fragment within medial articular surfaces" (Respondent's Exhibit 28). Dr. Inserra saw Camilliti post-operatively seven times between December 21, 2007 and March 12, 2008 (*see* Petitioner's Exhibit M). By the January 4, 2008 visit, Dr. Inserra noted the presence of a superficial wound infection and continued him on the antibiotic "Keflex." The January 7, 2008 post-op report notes warm, dry skin and a healed suture abscess. It also notes resolution of drainage, erythema, satisfactory motion, and no ecchymosis,[6] swelling or calf tenderness. By the January 10, 2008 visit, Camilliti's right knee was able to be put through its full range of motion, and there were no signs of effusion, warmth, drainage or erythema. The February 2, 2008 visit revealed residual soreness with prolonged walking as well as some mild arthritis, mild thigh atrophy, a satisfactory range of motion for his right knee, slight crepitus[7] and vague anteromedial tenderness. Dr. Inserra recommended physical therapy. The March 12, 2008 final post-operative report indicates that Camilliti was experiencing soreness while walking and occasional mild crepitus, and that there was mild tenderness of the anteromedial joint line and mild arthritic changes to his right knee. Dr. Inserra noted some

[6]Erythema is redness and ecchymosis is bruising (Stedman's Medical Dictionary, 28th ed.).

[7]Crepitus of a knee refers to the clicking or grinding sound of knee joints grating against each another, and is often associated with osteoarthritis (Stedman's Medical Dictionary, 28th ed.)

improvement of pain, no buckling, trauma, swelling, erythema, ecchymosis, effusion or calf tenderness, and he noted that Camilliti's knee was able to be put through its full range of motion, and that his gate was steady.

In January 2008, while he was recovering from knee surgery, Camilliti began complaining of back pain. Specifically, during his visit to Dr. Cucco on January 10, 2008, Camilliti complained of spasms in his lower back. Dr. Cucco authorized an orthopedic follow-up for this complaint, and on January 29, 2008, Camilliti was examined by Dr. Miller whose difficult- to-decipher report appears to contain a diagnosis of sharp pain in Camilliti's lower back, radiating bilaterally down his legs. Dr. Miller recommended "restricted duty" and authorized both an orthopedic consultation and an MRI for Camilliti's lower back (Petitioner's Exhibit N, and Respondent's Exhibit 34). With respect to Camilliti's knee, Dr. Miller noted that there had not been significant improvement since the surgery and that the knee would intermittently give way. Camilliti began receiving physical therapy for his right knee in February 2008, and for a sprain/strain in the lower (lumbar) region of his back in March 2008 (Petitioner's Exhibit O).

The MRI of petitioner's lumbar spine was performed in March 2008. The neuroradiologist's report notes mild multilevel disc desiccation and degeneration,

anterior disc bulge/osteophyte complexes (L1-2 through L4-5), a small left posterolateral canal disc herniation producing a mild impression on the left ventral margin of the thecal sac (L3-4), and additional degenerative disc and facet changes at L5-S1 (Petitioner's Exhibit Q). Camilliti was next examined on April 3, 2008 by Dr. Michael Yorio, a specialist in sports medicine, whose report indicates that he was suffering from right knee pain secondary to osteoarthritis, and low back pain secondary to degenerative disc disease (Petitioner's Exhibit R).

Following Camilliti's retirement, and pursuant to the requests for ADR and ODR, the Medical Board began the process of evaluating Camilliti for a possible disability retirement pension. On June 18, 2008, the Medical Board conducted its required interview and physical examination of Camilliti and reviewed his medical records. The Medical Board noted Camilliti's assessment that he was unable to perform full police duties because his right knee and back prevented him from standing for any meaningful period of time, and from being able to wear his police-issued gun belt. He stated that he did not find the arthroscopic surgery that helpful, and that his knee shifts and gives way both on level surfaces and on stairs. During the physical examination, the Medical Board noted that Camilliti walked with a reciprocal gate, slightly favoring his right leg. The Medical Board also noted that he was able to walk on his heels and toes without difficulty, and perform a full

squat without complaint. The stability testing of the knee revealed neither evidence of anterior or posterior laxity, nor evidence of medial or lateral laxity. Flexion and extension of Camilliti's knees were full and equal bilaterally, with minimal subpatellar crepitus at extreme flexion of his right knee. The knee patellar grind test -- to rule out the possibility of softening of cartilage under the kneecap due to poor alignment of the kneecap (also referred to as patellofemoral syndrome or chrondromalacia patella) – was negative, as was the McMurray's test, and the testing for ballottement.[8]

The Medical Board's physical examination of Camilliti's lower back revealed subjective complaints of tenderness from L1 - L4 in the midline and at both sacroiliac areas. The Medical Board found neither paralumbar tenderness nor spasm nor sciatic notch tenderness. Petitioner's range of motion flexibility tests yielded the following results: flexion to 65°; extension to 30°; rotation bilaterally to 20°; knee jerks and ankle jerks were 2 + bilaterally; sitting straight leg raises to 90° and supine straight leg raises to 80° bilaterally; and manual muscle strength testing was found to be 5/5 at hips in flexion, abduction and adduction, at the knees in flexion and extension, at the ankles in dorsi flexion, plantar flexion, inversion

[8]Ballottement refers to a floating object (Dorland's Illustrated Medical Dictionary, 27th ed.).

and eversion, at the extensor hallus longus.[9]

The June 18, 2008 report disapproving of the applications for both ADR and ODR, states that, upon review of the submitted documents as well as upon its own interview and physical examination of Camilliti, the Medical Board was of the consensus that "the documentary and clinical evidence fails to substantiate that the officer is disabled from performing the full duties of New York City Police Officer" (Petitioner's Exhibit S).

In an effort to obtain a reconsideration of the disapproval/denial, Camilliti submitted a letter prepared by Dr. Yorio, dated September 10, 2008, which states that Camilliti suffers from "osteoarthritis of his right knee and non-radicular disc bulges of his lumbar spine." The letter also states that "[h]e will have significant difficulty and pain with high impact ambulatory activity or prolonged or frequent lifting greater than 20 pounds" (Petitioner's Exhibit T). In addition, Camilliti submitted a copy of a report prepared by Dr. Inserra, dated September 22, 2008, which contains a history and the results of the examination conducted that day. He diagnosed mild arthritis in Camilliti's right knee with recurrent pain syndrome, and

[9]Extensor hallus longus is the long thin muscle on the shin that extends the big toe and dorsi flexes and supinates the foot (www. nlm. nih.gov /medlineplus/mplusdictionary.html).

chronic lower back pain, multilevel arthritis, and spondylosis.[10] As part of his medical recommendation, Dr. Inserra stated that Camilliti "is not able, as a result of the above conditions, to perform the duties of a Police Officer" (Petitioner's Exhibit U). Additionally, Camilliti submitted the report of neurologist Dr. Fawzy Salama. In his report, dated November 28, 2008, Dr. Falama offers his assessment that the injuries are most likely the cumulative injuries acquired as a police officer, and that Camilliti's chronic low back pain contributes to his disability to function as a police officer (Petitioner's Exhibit V).

Pursuant to a remand by the Board of Trustees, the Medical Board reevaluated petitioner's disability applications in light of the newly submitted medical reports. On December 10, 2008, the Medical Board reviewed the additional medical reports and again interviewed Camilliti and conducted a physical examination of his right knee and lower back. During his interview, Camilliti reported that his knee was clicking more often and starting to give out, but had never buckled, and that his doctors spoke with him about a possible knee replacement to relieve his continued pain. Camilliti also stated that he has lower

[10]Spondylosis is a term referring to degenerative changes due to osteoarthritis (Dorland's Illustrated Medical Dictionary, 27th ed.).

pack pain, with unequal pain radiating down both legs. The Medical Board's physical examination revealed that Camilliti ambulated with a reciprocal, non-antalgic gait, and that he was able to heel and toe walk, squat to ¾ of a full range, and that he had no sciatic notch tenderness, or paraspinal muscle spasm. Petitioner's lumbosacral spine range of motion test revealed lumbar flexion to 50°; extension to 30°; right rotation to 30° with complaint of pain in the right buttock. Left rotation was to 20° with complaint of pain in the sacral iliac area. Left tilt to 15° with complaint in the sacral iliac, and right tilt to 15° with complaint of discomfort in the buttock. Manual motor testing was 5/5 in hip flexion, adduction, abduction, knee flexion and extension, ankle dorsi flexion and plantar flexion, inversion and eversion, and at the extensor hallugus longus. Sitting straight leg raises were to 90° bilaterally, with full extension of the knees bilaterally. Flexion of both the hips and knees was full and equal bilaterally. There was no patella ballottement in either knee, no patella grand, and no McMurray sign on the right. There were subjective complaints of tenderness at the L4-L5 level as well as at the sacrum.

In its December 10, 2008 report, the Medical Board reaffirmed its prior determination and denied his ADR and ODR applications, once again, finding that the documentary and clinical findings did not substantiate Camilliti's claim that he

was disabled from performing the full duties of a police officer (Petitioner's Exhibit W).

On February 20, 2009, Camilliti had additional x-rays taken of his right knee and low back, and on February 25, 2009, he was examined by orthopedist Dr. Christopher Durant. In his report, Dr. Durant stated his impression of low back pain, lumbar radiculopathy with osteoarthritic changes to the lumbosacral spine, and of internal derangement in Camilliti's right knee. He recommended an MRI of the right knee and lumbar spine (Petitioner's Exhibit Y), both of which were performed on March 5, 2009. The right knee MRI revealed a tear in the posterior horn of the medial meniscus, loss of cartilage along the medical facet of the patella, and minimal effusion. The MRI of his lumbosacral spine revealed small left parasaggital disc herniation at L2-L3, central disc herniation at L3-L4 and L4-L5, and mild bilateral neural foraminal stenosis at L5-S1. In his follow-up examination, Dr. Durant recommended physical therapy and referred Camilliti for a neurosurgical consultation.

On April 16, 2009, Camilliti saw neurosurgeon Dr. M. Chris Overby, who diagnosed him as suffering from mechanical pack pain[11] and recommended pain

[11]Mechanical back pain is pain occurring in the vertebrae, soft tissues, discs or spinal joints which is uncertain in origin, idiopathic (ehow. com/facts _6149719_mechanical-back-pain_.html).

management treatment, not surgery.

In a report dated June 23, 2009, Dr. Yorio stated his support of Camilliti's disability application. Dr. Yorio pointed out that Camilliti's worsening osteoarthritic condition was apparent based upon his comparative review of the MRIs performed in March 2008 and in March 2009.

Upon remand by the Board of Trustees, the Medical Board again reviewed Camilliti's application. On June 24, 2009, the Medical Board issued a decision deferring its final recommendation pending receipt of additional medical documentation.

On July 21, 2009, Camilliti was examined by a neurologist, Dr. Gary P. Kaplan, whose report noted no focal motor deficits in his upper or lower extremities, usual gait, and well performed heel-toe tandem gait. Dr. Kaplan also found "plantar response is flexor bilaterally" and that Camilliti experienced lumbar pain associated with straight leg raises at approximately 45 degrees, although there was no tenderness to palpation at either sciatic notch. He concluded that "Camilliti appears to have mechanical low back pain, and he does note some increased pain on active lumbar extension. Some of his pain my be related to facet

arthropathy.[12] There does not appear to be significant nerve root impingement" (Respondent's Exhibit 47).

On September 9, 2009, Camilliti was examined by orthopedist Dr. Brian Neri who reported right knee osteoarthritis with a possible posterior horn medial meniscal tear (Petitioner's Exhibit EE). On September 22, 2009, Camilliti was again examined by Dr. Yorio whose report of that date contains a diagnosis of osteoarthritis of the right knee. Dr. Yorio's report also indicates that he discussed a course of pain management which would involve hyaluronic acid injections ("Euflexxa"), and, as a last resort, the possibility of a undergoing a total knee replacement (Petitioner's Exhibit FF).

On December 4, 2009, Camilliti was examined by orthopedic surgeon Dr. Eugene S. Krauss and physician's assistant Steve Marsala. The report, prepared by the physician's assistant, indicates that Camilliti is a good candidate for repeat right knee arthroscopy (Petitioner's Exhibit GG). On June 4, 2010, Camilliti consulted with orthopedic surgeon Dr. Michael Murray, who issued a report diagnosing him as suffering from lumbar radiculopathy. Dr. Murray recommended physical therapy and requested a new MRI of petitioner's lumbar spine.

---

[12]Facet arthropathy refers to arthritis in the facet joints which is commonly associated with intensified low back pain upon twisting or extension motions (www. facetdiseasefacts.com).

Meanwhile, the Medical Board concluded its evaluation and issued its final decision on March 10, 2010, reaffirming its previous decision disapproving Camilliti's application for ADR and ODR on the ground that the documentary and clinical evidence fail to substantiate that Camilliti is disabled from performing the full duties of a police officer. Thereafter, on July 14, 2010, the Board of Trustees denied petitioner's disability application and this Article 78 petition ensued. As referenced above, and for reasons unstated, Camilliti seeks a judgment only with respect to the denial of the ADR application. Accordingly, this decision and judgment is only with respect to the Medical Board's disapproval of an ADR pension.

Camilliti commenced this Article 78 proceeding seeking a judgment annulling respondent's determination on the grounds that it was arbitrary, capricious, unreasonable and unlawful and directing the respondents to retire him with an ADR pension. More specifically, Camilliti asserts that the Board of Trustees and Medical Board failed to articulate reasons for disagreeing with the reports and recommendations submitted by the various physicians on his behalf, and therefore, improperly denied him a retirement allowance based upon his LOD injuries.

In their answer opposing the petition, respondents argue that the final

disapproval/denial of petitioner's ADR application was supported by ample credible medical evidence and was therefore neither irrational, nor arbitrary or capricious, and must be sustained.

An application for ADR involves a two-tier administrative process in which the Medical Board must first determine whether the applicant is physically or mentally incapacitated for the performance of city-service (*see* Administrative Code §§ 13 - 168 [a], 13 - 252). Only if the applicant is found to be disabled must the Medical Board advise the Board of Trustees whether the disability was a "natural and proximate result of the accidental injury received in such city-service while a member" (Administrative Code § 13 - 252), entitling the member to an ADR pension.

In an article 78 challenge to a (negative) disability determination, it is well settled that the Medical Board's finding "will not be disturbed if the determination is based on substantial evidence. While the quantum of evidence that meets the 'substantial' threshold cannot be reduced to a formula, in disability cases the phrase has been construed to require 'some credible evidence'" *Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d 756, 760 [1996] [internal citations omitted]). "[C]redible evidence is evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered, and

further that it 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 N.Y. City Fire Dept., Art. 1-B Pension Fund*, 90 NY2d 139, 147 [1997] [internal citations omitted]). It is also well settled that resolution of conflicting medical evidence lies with the Medical Board and that an Article 78 reviewing court may not weigh the medical evidence or "'substitute [its] own judgment for that of the Medical Board'" (*Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d at 761).

With respect to the instant matter, it is Camilliti's position that the Board of Trustees failed to articulate its reasons for disagreeing with the reports and recommendations submitted by the various physicians on his behalf. In response, respondents rely on the results of the Medical Board's own observations, measurements and examinations of Camilliti, including range of motion, strength, flexibility and stability tests, and they contend that their objective results provide ample credible evidence that petitioner is not disabled.

A review of the parties' submissions reveals that, although there is no comparison of the findings of the Medical Board's range of motion and other tests to those which are accepted within the medical community as 'normal' (*see Benitez v Mileski*, 31 AD3d 473, 474 [2nd Dept 2006]), the specific testing results are not

disputed by petitioner. Rather, it is the medical significance attached to the testing results and the conclusions drawn by the respondents which petitioner disputes. The parties' submissions also reveal that Camilliti was provided with repeated opportunities to submit medical documents in support of his application for ADR, and that during each of its four reviews, the Medical Board considered these documents as part of its evaluation processes.

Respondents contend that, despite their different conclusions, the results obtained by Camilliti's physicians support the Medical Board's recommendation and final determination that he is not disabled. Respondents recount the results of the MRIs, x-rays and radiology reports, and pre- and post-operative reports, physical therapy reports and physical examinations submitted by, or on behalf of, petitioner, and point out that these reports, including those of Drs. Yorio and Inserra, almost uniformly, diagnose low back pain due to multilevel arthritis and osteoarthritis of the right knee, with mild clicking (post arthroscopic surgery). Respondents also point out certain inconsistencies between his claims of pain and limitations and the results of objective tests and physical examinations performed by the Medical Board and to some degree, by his own physicians, and they maintain that Camilliti's knee and back impairments are not sufficiently disabling as to render him physically incapacitated for the purpose of performing the full

duties of an officer of the NYPD. Petitioner's reliance on the different conclusions reached by his physicians on the issue of his physical incapacitation is unavailing.

Where, as here, there are conflicting interpretations of the medical evidence, the authority to resolve such conflicts rests solely with the Medical Board (*Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d at 761), and, as stated above, the court may not reevaluate the evidence and substitute its own judgment for that of the Medical Board. Inasmuch as the Medical Board did not find Camilliti physically incapacitated for the performance of his duty as an officer of the NYPD, this court does not need to determine whether the claimed disability or disabilities were the proximate result of an accidental injury sustained in the line of duty, the second tier of the review process (Administrative Code § 13 - 252; *Matter of Drayson v Board of Trustees of Police Pension Fund of City of N.Y.*, 37 AD2d 378, 380 - 381 [1st Dept 1971] *affd* 32 NY2d 852 [1973]).

Insofar as petitioner has not demonstrated grounds for any of the other relief he requests, that relief is denied. Accordingly, for the reasons set forth above, it is

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

Dated: July 22, 2011

ENTER:

J.S.C.

HON. ANIL C. SINGH
SUPREME COURT JUSTICE