

Matter of Garcia v Kelly
2013 NY Slip Op 32843(U)
November 1, 2013
Supreme Court, New York County
Docket Number: 100898/13
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 100898/2013
GARCIA, LUIS
vs.
KELLY, RAYMOND
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 4, were read on this motion to/for Article 78

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1-1A

Answering Affidavits — Exhibits _____ No(s) 2-4

Replying Affidavits _____ No(s) _____

Upon the foregoing papers, it is ordered that this motion is

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

**THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION,
& Judgment 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: 11/1/13

[Signature], J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----X

In the Matter of the Application of
LUIS GARCIA,

Petitioner,

Index No. 100898/13

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

**Decision, Order,
and Judgment**

-against-

RAYMOND KELLY, as 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

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appear in person at the Judgment Clerk's Desk (Room
411B).

Respondents
-----X

JOAN B. LOBIS, J.S.C.:

Petitioner, Retired Lieutenant Luis Garcia, brings this proceeding under Article 78 of the Civil Practice Law and Rules. He seeks to annul the determination of Respondent Board of Trustees of the Police Pension Fund, Article II, which denied him an Accident Disability Retirement allowance. For the reasons stated below, the petition is denied.

On October 15, 1990, Luis Garcia was appointed as an officer to the New York City Police Department. On March 12, 2004, Mr. Garcia injured his lower back during a police training exercise. He was seen for the injury, diagnosed with "back sprain" and treated with Motrin. Later that month, he filed a line-of-duty report regarding the March 12th injury.

On July 17, 2010, Mr. Garcia reinjured his lower back in further line-of-duty activity.

He was again seen for the injury and was determined to have "lower back strain." In September 2010, Garcia filed a second line-of-duty report for the July 17th injury. The following month, he applied to the Police Pension Fund ("PPF") for service retirement.

In applying for retirement, Garcia sought, in pertinent part, Accident Disability Retirement ("ADR") benefits based on his back ailments. The Medical Board Police Pension Fund Article II, which consisted of a panel of three physicians, examined Garcia and reviewed his medical records. The Medical Board recommended to the Board of Trustees that it disapprove Garcia's claim, finding insufficient evidence that the retired lieutenant was disabled from performing his full duties as an officer at the time of his retirement. Garcia twice challenged that recommendation, each time submitting additional medical evidence to support his claim. Each time, however, the Medical Board recommended disapproval of Garcia's application in light of its findings that the lieutenant had not been disabled from performing his full duties as an officer. Following the Medical Board's third decision reaffirming its recommended disapproval, the matter was submitted to the PPF's Board of Trustees. In light of the Medical Board's recommendation and findings, the Board of Trustees voted to disapprove Garcia's ADR application. On February 15, 2013, the PPF notified Garcia of the denial. This petition followed.

Garcia seeks to annul the determination denying ADR benefits. He claims that the Medical Board did not fully and properly evaluate the evidence and that the Board failed to consider all of the reports and testing. He further requests that upon vacatur, this Court direct Respondents to grant him ADR benefits retroactive to the date of his ordinary retirement. Petitioner alternatively

requests that this Court direct a factual hearing on disability issues. Lastly he seeks attorney's fees pursuant to Section 1988 of Title 42 of the United States Code.

Respondents oppose the petition. They contend that the determination was proper because the Board of Trustees was entitled to rely upon the Medical Board's finding of no disability. They further contend that were this Court to vacate the determination, it would be improper to order any ADR allowance since as a threshold matter the Medical Board found that any injuries were not incapacitating, and, therefore, the Board of Trustees has not yet had the opportunity to consider whether any disability of the Petitioner resulted from a work-related accident.

ADR benefits are available, in pertinent part, when an examination and investigation show that the applicant is physically incapacitated for the performance of duty as a natural and proximate result of an accidental injury received in the line of duty, and that incapacitation was not the result of the applicant's willful negligence. See Administrative Code of City of New York § 13-252. An applicant for ADR benefits has the burden of proving the existence of the disability and that the disability is causally related to an injury sustained in the line of duty. See, e.g., Drayson v. Bd. of Trs., 37 A.D.2d 378, 380 (1st Dep't 1971).

In this case, Garcia claims in particular that the Medical Board did not fully and properly evaluate a report dated May 4, 2011, that he submitted from a neurosurgeon, Dr. Bennie W. Chiles, III. Garcia further contends that the Board downplayed the finding of an electromyogram report dated May 11, 2011. Lastly he claims that the Medical Board failed to consider all of the

subjective reports and objective testing.


The Medical Board's determination "is conclusive if it is supported by some credible evidence and is not irrational." Rodriguez v. Bd. of Trs., 3 A.D.3d 501, 501 (2d Dep't 2004). "[D]ispute[s] between the opinions of medical experts . . . [are] for the Medical Board to resolve." Cassidy v. Ward, 169 A.D.2d 482, 483 (1st Dep't 1991). The Medical Board may validly rely on its own medical opinion, even where the petitioner presents evidence contrary to the Board's opinion, so long as the opinion is rationally based in the record. See Tobin v. Steisel, 64 N.Y.2d 254, 259 (1985).

Having reviewed the record, this Court finds that Garcia's claims regarding the Chiles' report and EMG report amount to a mere disagreement with the Medical Board's weighing of the medical evidence present. The Medical Board's decision dated January 17, 2012, not only references, but also discusses the findings of each of these reports. In his petition, Garcia does not specify any other reports or tests that the Board purportedly failed to consider or how those other materials would impact the Board's finding. Based on this record, the Court finds that there was credible medical evidence on which the Board relied that supports its finding of no disability. Therefore, the Board of Trustees' reliance upon the Medical Board's recommendation and the Board of Trustees' determination to deny ADR benefits for Petitioner is not arbitrary or capricious.

Accordingly, it is

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

Dated: November / , 2013



JOAN B. LOBIS, J.S.C.

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JOAN B. LOBIS