

Matter of Munroe v Kelly
2014 NY Slip Op 31003(U)
April 17, 2014
Supreme Court, New York County
Docket Number: 103974/12
Judge: Paul Wooten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

In the Matter of the Application of
ANTHONY MUNROE,
Petitioner,

INDEX NO. 103974/12

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

MOTION SEQ. NO. 001

-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 and THE BOARD OF TRUSTEES
of the Police Pension Fund, Article II,**
Respondents.

FILED

APR 18 2014

COUNTY CLERK'S OFFICE

The following papers numbered 1 to 5 were read on this motion by ~~petitioner~~ ^{NEW YORK} for a judgment pursuant to Article 78.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1, 2</u>
Answering Affidavits — Exhibits (Memo) _____	<u>3, 4, 5</u>
Replying Affidavits (Reply Memo) _____	

Cross-Motion: Yes No

In this CPLR article 78 proceeding, Anthony Munroe (petitioner), a retired New York City police officer, challenges the respondents' denial of his application for an accident disability retirement (ADR) pension, retroactively to his date of retirement. Petitioner argues that this determination should be overturned because respondents' decision was arbitrary, capricious and contrary to established law.

BACKGROUND

Petitioner, a former Bronx Narcotics Detective, was appointed to the uniformed force of the New York City Police Department (NYPD) on April 30, 1991 and served continuously until

* 2]

his retirement on April 1, 2012. On February 15, 2007, petitioner slipped and fell on an ice-covered sidewalk outside of an NYPD facility located at 500 Abbot Street, Bronx, New York, between 6:00 p.m. and 6:15 p.m. Petitioner was taken to Jacobi Medical Center Emergency Room where he was diagnosed with a "contusion/sprain" to his left ankle (Verified Petition ¶ 6). On the day of his accident petitioner worked his regular shift of 9:27 hours (9:27 a.m.) to 18:00 hours (6:00 p.m.). Petitioner avers that he was on employment overtime after 6:00 p.m. for an additional six hours, including all the time that he was receiving treatment, and was released from the Hospital Emergency Room. Petitioner further asserts that he was returning to his command at the time he slipped and fell on the ice covered sidewalk.

On November 7, 2008, petitioner filed an application for an ADR pension, pursuant to NYC Administrative Code § 13-252. Also, as customary, the Police Commissioner submitted an ordinary disability retirement (ODR) pension application on petitioner's behalf (Verified Petition ¶ 9). On January 23, 2009 and June 19, 2009, the Police Pension Fund Medical Board (Medical Board), disapproved both the petitioner's ADR pension application and the Police Commissioner's ODR pension application (*id.* at ¶ 10). Subsequently, on November 20, 2009 the Medical Board deferred rendering a decision on petitioner's disability applications. On January 10, 2010, petitioner had surgery on his left ankle. Then, on July 23, 2010 the Medical Board again denied petitioner's disability applications. On November 17, 2010 petitioner submitted a new ADR application and the Police Commissioner submitted an ODR application on his behalf (*id.* at ¶ 15). The Medical Board on March 25, 2011, disapproved petitioner's disability applications on the basis of "no significant objective physical findings" (*id.* at ¶ 16; Notice of Petition, exhibit J). On July 1, 2011, after a further medical exam, the Medical Board approved the petitioner's ADR pension application and disapproved the Police Commissioner's ODR application (*id.* at ¶ 18; Notice of Petition exhibit L).

The Board of Trustees deferred taking action on petitioner's application based upon the

City Trustees challenge of whether petitioner was in City-Service at the time of his accident, until June 13, 2012, when the Board of Trustees considered petitioner's case (*id.* at ¶ 19, 20). In rendering its determination, the Board of Trustees reviewed reports, including employment time sheets and overtime employment records and concluded that petitioner had signed out from duty at 6:00 p.m. (see respondents exhibit 4) despite post-accident records that indicate he had worked overtime until 12:00 a.m. (see Notice of Petition, exhibit C). Thus, by a six-to-six vote, the Board of Trustees concluded that petitioner's overtime records were inconclusive and denied the petitioner's application for ADR pension and awarded petitioner an ODR pension. An affirmative vote by seven of the twelve member Board is required to grant the Medical Board's ADR recommendation. This Article 78 proceeding followed on November 30, 2011.

Petitioner asserts that the Board of Trustee's determination should be overturned because it was arbitrary, capricious and contrary to established law, because he suffered his slip and fall injury while on overtime police duty, which qualifies him to be within the ADR pension criteria. Respondents maintain that petitioner failed to demonstrate that his injuries occurred while he was on overtime duty, as there are records that indicate that petitioner signed out of duty at 6:00 p.m., just minutes before the accident. Instead petitioner maintains that he was allegedly on overtime duty while at the hospital emergency room until his release. The Board of Trustees concluded that petitioner did not meet his burden to establish that the overtime records were sufficient to indicate or establish the exact times of his overtime duty on the date of the accident.

DISCUSSION

Section 13-252 of the Administrative Code of the City of New York governs accident disability retirement for members of the NYPD pension fund. It provides that upon application by a member or by the Commissioner, the Medical Board shall certify to the Board of Trustees that the member is entitled to ADR if a medical examination and investigation by the Medical

Board show that the member "is physically or mentally incapacitated for the performance of city-service as a natural and proximate result of an accidental injury received in such city-service while a member."

It is well settled that the Board of Trustees is entitled to rely on the Medical Board's recommendations as to causation, even in the face of conflicting evidence, and that its decision as to whether a police officer's disability is the result of an "accidental injury" should not be disturbed unless its factual findings are not supported by substantial evidence or unless its final determination is arbitrary and capricious (*see Matter of Canfora v Board of Trustees*, 60 NY2d 347, 351 [1983]; *Matter of Hipple v Ward*, 146 AD2d 201, 207 [1st Dept 1989]; *see also Matter of Meyer v Board of Trustees of the New York City Fire Dep't*, 90 NY2d 139 [1997]; *Matter of Borenstein v New York City Employees' Retirement System*, 88 NY2d 756, 760-61 [1996]).

Petitioner has the ultimate burden of demonstrating that there was an injury and that a causally related disability resulted (*see Matter of Drayson v Board of Trustees of Police Pension Fund*, 37 AD2d 378 [1st Dept 1971]). Here, the Medical Board's conclusion that petitioner suffered a disabling ankle injury is supported by credible medical evidence. Likewise, the determination by the Board of Trustees that the petitioner's injury was not caused while on duty, because it could not be verified that petitioner actually was on overtime, was based upon their review of credible evidence sufficient to support their conclusion. The Court finds that the Board of Trustees' determination was not arbitrary or capricious since it was based on the evidence before them where, again, there was no convincing proof establishing that petitioner worked overtime on the date in question and the exact times of the overtime, and the burden to produce evidence establishing same rests with the petitioner. Based on the above detailed record, the Court finds that the determination by the Board of Trustees denying the petitioner ADR has a rational basis in the record and was not arbitrary or capricious as a matter of law, and should be upheld. Accordingly, the determination is upheld and the petition dismissed.

CONCLUSION

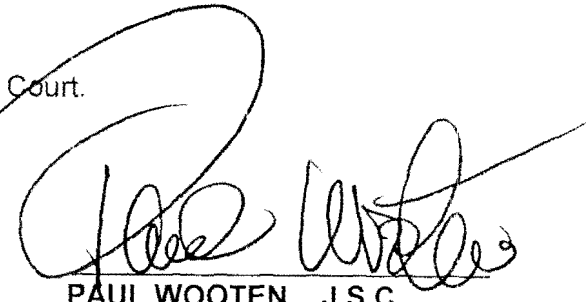
For these reasons and upon the foregoing papers, it is,

ORDERED that petitioner's Article 78 petition is denied and the proceeding is dismissed, without costs or disbursements to respondents; and it is further,

ORDERED that the respondents shall serve a copy of this Order, with Notice of Entry, upon the petitioner, and upon the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 4-17-14

Enter: 
PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: : DO NOT POST REFERENCE

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