

**Matter of Alston v New York City Empls. Retirement  
Sys.**

2018 NY Slip Op 31776(U)

July 26, 2018

Supreme Court, New York County

Docket Number: 157156/17

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 56**

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IN THE MATTER OF THE APPLICATION OF

**Index No. 157156/17**

**OMAR ALSTON,**

Petitioner,

**Decision and Order**

FOR A JUDGMENT PURSUANT TO CPLR ARTICLE 78

*-against-*

**NEW YORK CITY EMPLOYEES RETIREMENT SYSTEM;  
THE BOARD OF TRUSTEES OF THE NEW YORK CITY  
EMPLOYEES RETIREMENT SYSTEM; THE CITY OF  
NEW YORK; AND THE NEW YORK CITY  
DEPARTMENT OF CORRECTIONS,**

Respondents.

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**HON. JOHN J. KELLEY**

In this Article 78 proceeding, the petitioner, a retired New York City Corrections officer, seeks to annul the respondents' determination to deny his application for a performance of duty disability retirement benefit ("PDR"). The petitioner argues that the determination was arbitrary and capricious, as well as contrary to established law.

The petitioner was appointed as a corrections officer on February 12, 2004. He retired from service on June 28, 2015. The petitioner alleges that he became disabled as a result of injuries that occurred during three separate line-of-duty incidents on July 13, 2008, July 29, 2011, and April 7, 2012. All of the incidents involved either altercations with inmates or altercations with individuals visiting inmates. During these incidents, the petitioner reportedly injured his right wrist, both hands, ribs, right elbow, both knees, and lower back. On March 4, 2014, the petitioner applied for PDR benefits based on the reported line-of-duty incidents. In his application, the petitioner stated that the disabling conditions included bilateral hand and wrist injuries, as well as impairments in the left ankle, left shoulder, and lumbar spine. The petitioner further indicated that the symptoms from these disabling conditions began on July 31, 2008 and ultimately caused him to stop working on December 7, 2013.

Section 507-c of the Retirement and Social Security Law governs the procedures for awarding PDR benefits to retired corrections officers. It provides that: "[a]ny member ... [of the] New York City department of correction, who becomes physically or mentally incapacitated for the performance of duties as the natural and proximate result of an injury, sustained in the performance or discharge of his or her duties by, or as a natural and proximate result of, an act of any inmate ... shall be paid a performance of duty disability retirement allowance equal to three-

quarters of final average salary.” The determination as to an applicant’s eligibility for disability retirement benefits is a multistep process. First, the applicant must meet his initial burden of establishing that his claimed disability was the “natural and proximate result of an act of any inmate” (see *Matter of Stevens v DiNapoli*, 155 AD3d 1294, 1294 [3rd Dept 2017]; *Matter of Naughton v DiNapoli*, 127 AD3d 136, 139 [3rd Dept 2015]; *Coleman v Board of Trustees of New York City Fire Dep’t, Article 1-B Pension Fund*, 224 AD2d 522, 523 [2d Dept 1996]). The Board of Trustees of the New York City Employee Retirement System will refer the application to the Retirement System’s Medical Board. The Medical Board must then conduct its own medical examination of the applicant, consider the medical evidence submitted by the applicant, and determine if the applicant is physically or mentally unable to perform his job duties. If the Medical Board determines that the applicant is disabled, it must then advise the Trustees as to whether the disability was the natural and proximate cause of an injury sustained through inmate contact (*Mtr. Of Borenstein v New York City E.R.S.*, 88 NY2d 756, 760 [1996]). While the Trustees must accept the Medical Board’s finding that the applicant is disabled, it must make its own independent evaluation as to the Medical Board’s recommendation regarding causation (*Borenstein*, 88 NY2d at 760; see also *Matter of Canfora v Board of Trustees*, 60 NY2d 347, 352 [1983]).

In this case, both the Medical Board and the Trustees found that the petitioner was disabled as a result of having sustained a scapholunate dislocation to his right wrist, but that his disability was not proximately caused by any of the line-of-duty incidents involving inmates. Central to this determination was the Medical Board’s finding that the petitioner’s wrist fracture was caused by an off-duty car accident on August 25, 2014, and not by any of the altercations with inmates. This finding was based on three factors: (1) a thorough examination of the petitioner’s right hand and wrist prior to the car accident did not reveal either a tear of the scapholunate ligament or thenar musculature; (2) petitioner’s own physician said that the car accident caused the wrist fracture; and (3) after the last line-of-duty incident in 2012, the petitioner was able to resume full duty within a relatively short period of time, which would have been highly unlikely if he had sustained a tear of the scapholunate ligament. The Trustees affirmed these findings and denied the petitioner’s application for PDR.

It is well settled that in an Article 78 proceeding challenging a disability determination, the findings of the Medical Board, as affirmed by the Trustees, should be sustained so long as they are based on “some credible evidence” (*Borenstein*, 88 NY2d at 760-61). The court should respect the Medical Board’s determination when it issues a report detailing the medical proof that it considered, including the results of any tests and/or physical examinations of the applicant. The court should not substitute its own judgment for that of the Board unless the determination is clearly irrational (*id.*, at 761). Here, the Medical Board’s determinations are supported by credible medical evidence and, therefore, must be affirmed. The record shows that several examinations of the petitioner’s right wrist, all of which were conducted before his off-duty car accident, failed to reveal either a tear of the scapholunate ligament or thenar musculature. In 2011, the petitioner’s own physician ruled out such an injury and confirmed this finding after ordering and reviewing the results of an MRI. In 2014, Dr. Wilson Chau performed surgery on the petitioner’s right hand in order to alleviate his carpal tunnel syndrome. The postoperative

reports indicated that the petitioner was making a good recovery and did not indicate any diagnosis of a tear of the scapholunate ligament or thenar musculature. Furthermore, it is undisputed that the petitioner was diagnosed with tears of the scapholunate ligament and thenar musculature of the right wrist only after the August 25, 2017 car accident.

The Medical Board was justified in relying on the medical evidence, including reports from the petitioner's own doctors, in reaching its conclusion that the petitioner's injuries were caused by his car accident and not his contact with inmates. This conclusion is further supported by the fact that the petitioner was able to resume his full duties after the last line-of-duty incident in 2012. The return to full duty and the lapse of time between the injuries and the onset of the ultimate disability constitute substantial evidence of a lack of causal connection (*see Baudille v Kelly*, 95 AD3d 415 [1st Dept 2012]; *Calzerano v Bd. Of Trs. of the N.Y.C. Police Pension Fund*, 245 AD2d 84 [1st Dept 1997]).

The petitioner argues that the Medical Board and Trustees ignored his history of complaints of pain and injury arising from the three line-of-duty incidents, and that the Board should have consulted an independent hand expert. The petitioner also maintains that the Board did not sufficiently consider the cause of all of the claimed disabling conditions referenced in the petitioner's application. As discussed above, the Medical Board relied on the findings of two physicians selected by the petitioner, as well as its own examination of the petitioner's right wrist and hand. Its reports discuss all the petitioner's injuries, starting with the first incident in 2008.

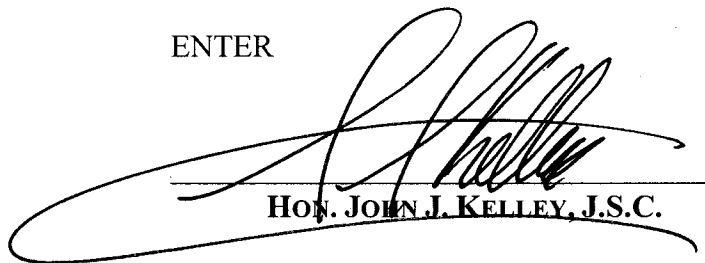
The petitioner now claims that his own physicians misdiagnosed his condition and ignored his history of severe pain, restricted range of motion and limited use of both hands, all of which the petitioner claims compelled him to file for disability retirement prior to the car accident. Even if the petitioner is correct, it is not the obligation of the Medical Board or the Trustees to attempt to second-guess the petitioner's own doctors. There was no need for the Medical Board to consult a new hand specialist given the findings of the petitioner's doctors. If the petitioner felt that these findings were inaccurate or incomplete, it was his burden to submit sufficient medical evidence to establish that his disabling injuries were caused by the line-of-duty incidents.

As to the claim that the Medical Board did not adequately consider all the claimed disabling conditions in the petitioner's application, the Court finds no support for this claim in the record. While the application did reference injuries to his back and shoulder, the petitioner was clear during his interviews with the Board that his inability to perform his duties was due to the injuries to his wrist and hands. Additionally, the reports of the Medical Board reviewed and referenced the petitioner's entire medical history since 2008, including injuries to his shoulders, knees, ankles, and lower back. The Medical Board found these injuries were either minor in nature or could not be attributed to the line-of-duty incidents. Accordingly, the record establishes that the Medical Board and the Trustees fully and fairly assessed the petitioner's disability claims and rationally determined that his disabling injuries were not caused by any of the line-of-duty incidents.

The petition is hereby dismissed. The Clerk shall enter judgment accordingly.

Dated: July 26, 2018

ENTER



HON. JOHN J. KELLEY, J.S.C.

**HON. JOHN J. KELLEY  
J.S.C.**