

**Christakis v New York City Tr. Auth.**

2019 NY Slip Op 30934(U)

April 1, 2019

Supreme Court, New York County

Docket Number: 159538/2018

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM**

*Justice*

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**INDEX NO. 159538/2018**

GREGORIOS CHRISTAKIS,  
Petitioner,

**MOTION DATE 02/05/2019**

- v -

**MOTION SEQ. NO. 001**

NEW YORK CITY TRANSIT AUTHORITY,  
Respondent.

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 25, 26, 27

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ADJUDGED that the cross motion of respondent to dismiss the petition is granted, the petition is denied, the proceeding is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent, having an address at \_\_\_\_\_, do recover from petitioner, having an address at \_\_\_\_\_, costs and disbursements in the amount of \$ \_\_\_\_\_, as taxed by the Clerk, and that respondent have execution therefor.

DECISION

Petitioner argues that he commenced this proceeding within the applicable statute of limitations and this court agrees. It

is undisputed that the determination denying petitioner short term disability became final and binding on June 14, 2018. Pursuant to CPLR § 217, the period of limitations for an action brought pursuant to CPLR Article 78 is four months after such final determination. Petitioner commenced this proceeding on October 15, 2018, four months and one day after the determination became final and binding. However, as petitioner points out § 25-a of the General Construction Law states that "when a period of time, computed from a certain day, within which. . .an act is . . .required to be done, ends on a Saturday, Sunday, or a public holiday, such act may be done on the next succeeding business day." As October 14, 2018 was a Sunday, petitioner had until October 15 to commence the instant proceeding.

However, this court finds, on the merits, that the denial by respondent of petitioner's application for retroactive short-term disability benefits for the period from November 14, 2014 to on or about June 12, 2015 (period of absence) was neither arbitrary nor capricious. See Minerva v Ward, 101 AD2d 754 (1<sup>st</sup> Dept. 1984).

The letter dated July 14, 2015 from respondent to petitioner that "Approved" his application for short-term disability benefits stated, in pertinent part:

"This approval has determined that the documentation submitted represents a health condition that meets the criteria for short term disability. This approval does not determine if the employee is eligible for short term disability."


By letter dated June 14, 2018 (denial letter), respondent informed petitioner that his retroactive claim for short term disability was denied, finding petitioner ineligible because he had not exhausted his sick leave during the period of his absence, a prerequisite for such benefits. Petitioner does not refute that he signed a bi-weekly timesheet that stated that he had an unused sick leave balance of 200 hours as of July 12, 2015. Contrary to petitioner's argument, such document is admissible through an attorney affirmation as it constitutes an admission by petitioner. See Zuckerman v City of New York, 49 NY2d 557, 563 (1980).

The denial letter stated that an additional reason petitioner was ineligible was because he had previously filed an application for Workers' Compensation benefits, by which he claimed to have suffered an on-the-job injury for the period of absence.

To prevent "double dipping", respondent's policy rendered workers who applied for Workers' Compensation benefits ineligible for short term disability benefits. The Short-Term Disability Policy dated November 4, 1998 defines short-term disability as "[a]n employee's verified prolonged, major or catastrophic **illness** that prevents him/her from performing his/her job and/or requires a leave(s) of absence for treatment/recuperation" [emphasis

supplied]. This court has no power to substitute its interpretation of that provision for that of respondent, which determined that it excluded an on-the-job injury, as respondent's interpretation is rationale and "legally permissible and . . . no breach of constitutional rights and protections". See West Irondequoit Teachers Assn. v Helsby, 35 NY2d 46, 50 (1974).

Petitioner's contention that respondent took an inconsistent position that petitioner was not injured on duty before the workers' compensation forum, while taking a contrary position with respect to his application for short-term disability, is unfounded. It was petitioner who took the inconsistent and unfounded position that he was injured on the job and later, in retrospect, that he suffered from an illness, misrepresenting that he had exhausted his sick leave.

<u>4/1/2019</u> DATE	 DEBRA A. JAMES, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE