

Morgan v O'Neill

2019 NY Slip Op 33063(U)

October 16, 2019

Supreme Court, New York County

Docket Number: 160225/2018

Judge: Debra A. James

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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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DONALD MORGAN,

Petitioner,

- v -

JAMES P. O'NEILL, AS POLICE COMMISSIONER OF THE CITY OF NEW YORK, AND AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THE POLICE PENSION FUND, KEVIN HOLLORAN, AS EXECUTIVE DIRECTOR OF THE NEW YORK CITY POLICE PENSION FUND, THE BOARD OF TRUSTEES OF THE POLICE PENSION FUND, and THE CITY OF NEW YORK,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

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

ORDER

Upon the foregoing documents, it is ADJUDGED that the petition is denied, and the proceeding is dismissed.

DECISION

In motion sequence number 001, petitioner Donald J. Morgan (Morgan) moves pursuant to CPLR Article 78 to challenge the decision by respondents James P. O'Neill, as Police Commissioner of the City of New York, and as Chairman of the Board of Trustees, of the Police Pension Fund, Kevin Hollaran, as Executive Director of the New York City Police Pension Fund, The

Board of Trustees of the Police Pension Fund (the Board of Trustees), and The City Of New York, to deny Morgan accidental disability retirement benefits (ADR) pursuant to New York City Administrative Code 13-252 (the Admin Code).

Background

On November 21, 2016, Morgan, a Sergeant for the New York City Police Department, was attempting to remove a battering ram from the trunk of a police automobile. The battering ram was in the trunk with other police equipment, including a kel box.¹ On this occasion, one of the kel box's cables was wrapped around the battering ram in the trunk. As a result, when Morgan attempted to remove the battering ram, he was unexpectedly pulled back towards the trunk causing an injury to his neck and right shoulder/arm area.

There is no dispute that Morgan is disabled from performing the duties of a police officer as result of the injuries he sustained on November 21, 2016. However, the Board of Trustees determined that Morgan was not entitled to ADR because his injuries were exertional and not accidental. The Board of Trustees final vote was 6-6 resulting in a denial of ADR to Morgan.

¹A kel box is used for communications in the field and has two thick cables attached to it.

Morgan subsequently filed this Article 78 proceeding challenging the Board of Trustees' determination asserting that the denial of ADR was arbitrary and capricious.

Discussion

Pursuant to Article 78, a petitioner may challenge a decision of an administrative body if it "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803[3]). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (Pell v Board of Educ. of Union Free Sch. Dist. No 1. of Towns of Scarsdale & Mamoroneck, Westchester County, 34 NY2d 222, 231 [1974]). Rationality is what is reviewed under...the arbitrary and capricious standard (id.)

In the event "the denial of accidental disability retirement benefits is the result of a tie vote by the Board of Trustees, such denial can be annulled only if the applicant is entitled to accidental disability benefits as a matter of law" (Bisiani v Kelly, 39 AD3d 261 [1st Dept 2007] [internal citations omitted])

The Admin Code "provides that an applicant is entitled to accident disability benefits if medical examination reveals that incapacitation was suffered as a natural and proximate result of an accidental injury received in such city-service while a

member, and that such disability was not the result of willful negligence on the part of such member" (Matter of Starnella v Bratton, 92 NY2d 836, 838 [1998] [internal quotation marks omitted]). The generally accepted definition of "an accident is a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact" (Matter of Leary v New York City Employees' Retirement Sys., 59 AD3d 547, 549 [2d Dept 2009] [internal quotation marks and citations omitted]). "Further, an injury which occurs without an unexpected event as the result of an act undertaken in the performance of ordinary employment duties is not an accidental injury" (id. [internal quotation marks omitted]).

In denying Morgan ADR, the Board of Trustee determined that Morgan's injury was exertional rather than accidental ["we failed to reach a conclusion that this incident of [Morgan] pulling out the battering ram with the Kell [sic] box wires entangled with it meets the criteria of an accident . .).]

The denial of ADR was based on a finding by the Board of Trustees that Morgan applied an extra amount of force after he realized that the battering ram was snagged ["it was snagged on some wire and rather than try to remove the wire, [Morgan] did what I think a lot of us in the room would do, pulled a little bit harder to try to get the battering ram removed, and

subsequently, as a noted in the interim report, injured his shoulder").

Furthermore, the Board of Trustees found that Morgan "placed the materials in the trunk or they were placed there for him" and that a disorganized trunk is commonplace, and any entanglement or disorganization is foreseeable. ["There's not a car in the city, NYPD car, that's very organized. Guys take the stuff out and they are done with their tour, they throw it back in the trunk"]. Morgan did not directly contest these factual findings, but argued that the wire wrapped around the battering ram was an unforeseeable precipitating event that renders the injury an accident.

Moreover, the Board of Trustees cited caselaw that supports its denial of ADR. In Matter of Heinichen v. Kelly, the police officer suffered an injury when "he forcibly attempted to close a stuck drawer, the drawer abruptly gave way, and he slammed his right thumb on the face of the drawer" (Matter of Heinichen v Kelly, 117 AD3d 441, 442 [1st Dept 2014] [internal quotation marks omitted]). The Heinichen court found that "[t]he closing of the drawer, a routine task, was not an accident, namely, a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact" and that it was "the foreseeable and the intended result of the petitioner's own conduct" (id. [internal quotation marks omitted]).

The Board of Trustees analogized the forcible attempt to close the drawer in Heinichen to the attempt by Morgan to remove the battering ram after he realized that it was caught on something by applying "an extra amount of force" ["I think the key to that sentence is the extra amount of force"].

The determination by the Board of Trustees to deny Morgan ADR was based on credible evidence, and not arbitrary and capricious. Morgan has failed to establish that incident was an accident as a matter of law, consequently, the decision by the Board of Trustees should not be disturbed (Bisiani, 39 AD3d at 261).

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| <u>10/16/2019</u> DATE | | | | | <u><i>Debra A. James</i></u> DEBRA A. JAMES, J.S.C. |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | <input type="checkbox"/> | GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | REFERENCE |
| | | | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |