

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

2020 NY Slip Op 31951(U)

June 22, 2020

Supreme Court, Kings County

Docket Number: 501939/2020

Judge: Loren Baily-Schiffman

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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 22 day of June 2020

**PRESENT: HON. LOREN BAILY-SCHIFFMAN**  
JUSTICE

In the Matter of the Application of  
WARREN CEASER,  
Petitioner,  
  
For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules  
  
- against -  
  
NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM; and  
THE BOARD OF TRUSTEES OF THE NEW YORK CITY  
EMPLOYEES' RETIREMENT SYSTEM,  
Respondents.

Index No.: 501939/2020  
  
Motion Seq. # 1  
  
DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Petition, Affidavits, Affirmation and Exhibits	1
Memorandum of Law in Support of Petition	2
Memorandum of Law in Opposition to Petition and Exhibits	3
Memorandum of Law in Reply	4

Upon the foregoing papers Warren Ceaser ("Petitioner"), petitions this Court for an Order pursuant to CPLR § 7804(c), (a) annulling the determination denying Petitioner Accidental Disability Retirement Benefits; and (b) directing Respondents to grant Petitioner his Accidental Disability Retirement Benefits retroactive to January 5, 2018 on the grounds that on the record as a matter of law Petitioner's disability was the natural and proximate cause of a service-related accident; (c) or in the alternative remanding this matter to the Board of Trustees of the New York City Employees' Retirement System for further review, with a

mandate to consider the specific medical records from Doctors Bennett Brown and Daniel Caligiuri that address causality in light of the established medical literature; (d) awarding Petitioner the costs and disbursements of this proceeding, including reasonable attorneys' fees; and (e) granting such other and further relief as to the Court may seem just and proper.

### Background

Petitioner was a Deputy Sheriff in New York City. On May 20, 2012, while apprehending a hit and run driver and handcuffing him, Petitioner tore his Ulnar Collateral Ligament (UCL), a ligament in his right thumb. Dr. Bennett Brown, Petitioner's treating orthopedist determined that Petitioner required surgery and performed surgery to repair the torn ligament on January 11, 2013. After the 2013 surgery and physical therapy, Petitioner was able to return to work, however, Petitioner had a 30% loss of use of his thumb. *Dr. Brown Medical Records P. 37, 39.* Additionally, while Petitioner was able to use his firearm, his marksmanship significantly declined because of his injury. *NYCERS March 14, 2019 Board Meeting Minutes P. 110, Lines 14-18.*

On August 4, 2016, Petitioner was driving on the Grand Central Parkway, when he observed a suicidal man approaching oncoming traffic. Petitioner attempted to save the suicidal individual, but in doing so was slammed to the ground and sustained several injuries including further injury to his right thumb. Dr. Daniel A. Caligiuri, Petitioner's treating orthopedist who specializes in hand surgery, diagnosed Petitioner with traumatic arthritis of the first metacarpophalangeal (MCP) joint in his right thumb resulting from the original tear to the UCL. Dr. Caligiuri performed fusion surgery on the joint, but after the second surgery,

Petitioner was unable to use his firearm at all. Accordingly, on February 25, 2019, Petitioner's employment as a Deputy Sheriff was terminated.

On January 5, 2018, Petitioner filed an application for Disability Retirement, pursuant to § 605-c of the Retirement and Social Security Law. On July 19, 2018, the Medical Board of New York City Employees' Retirement System ("NYCERS"), found that both the May 20, 2012 and August 4, 2016, incidents were accidents. However, the Medical Board found that the second incident was not the competent producing cause of Petitioner's disability because an MRI of his "thumb showed no re-tear of the UCL repair and no evidence of fractures to either the carpal bones or any surrounding bones." **Medical Board Report July 19, 2018 P. 6.** The Medical Board noted "the member following his surgery, which occurred following the incident of 2012, was able to return to full duty *with full use of his fingers and hand.*" *Id* (emphasis added). Accordingly, the Medical Board recommended the denial of Petitioner's Disability Retirement under § 605-c of the Retirement and Social Security Law.

On February 11, 2019, the Medical Board again reviewed Petitioner's application because further documentation was produced. The Medical Board made reference to the minutes of its July 19, 2018 meeting and did not make any corrections to its findings at that meeting. The Medical Board reaffirmed its earlier recommendation based on the fact that there was no evidence of a re-tear of the UCL "or subsequent scaphoid injury." **Medical Board Report Addendum February 11, 2019 P. 2.** The Medical Board explained that its opinion was that the two accidents "are not the cause of the loss of function and resulting disability. Osteoarthritis and the revisional surgery was the competent cause of [Petitioner's] decrease range of motion and, therefore, lack of full function of his thumb." *Id.*

On March 14, 2019, the Board of Trustees of NYCERS held a meeting where Petitioner appeared and appealed the Medical Board's recommendation to deny Petitioner's § 605-c Disability Retirement. Dr. Bottner, who appeared before the Board of Trustees accepted that the cause of osteoarthritis could be a traumatic event. **NYCERS March 14, 2019 Board Meeting Minutes, P. 119, Line 14.** Additionally, at the Board of Trustees Meeting, Petitioner noted that after his first surgery his marksmanship decreased, but he was still able to pass his test to use a firearm. **Id P. 110, Lines 14-18.** Furthermore, Dr. Bottner opined that after Petitioner's first surgery, he had a 30% loss of motion of his thumb. **Id P. 114. Line 1.** Ultimately, the Board of Trustees tabled the matter and requested Petitioner submit further medical records to the Medical Board regarding his first accident. **Id P. 122, Lines 10-15; P. 123, Lines 11-12.**

Petitioner was able to obtain only a few further medical documents, as the medical provider of his first surgery, Sun Medicine, had since closed. However, he was able to produce medical reports from Dr. Brown, Petitioner's first surgeon, and a letter Dr. Caligiuri, Petitioner's second surgeon. Dr. Caligiuri wrote "[Petitioner] was found to have *traumatic arthritis* of the right first MCP joint which ultimately required an arthrodesis which was performed on 4/13/2017. It should be noted however, that the patient's 8/4/2016 injury was a re-injury of the right thumb." **Dr. Caligiuri Letter April 29, 2019 (emphasis added).** Dr. Caligiuri further noted "the last procedure, which I performed, was thus necessitated by his work related injuries, and for no other reason." **Id.**

On May 13, the Medical Board reviewed the medical documents and Dr. Caligiuri's letter and came to the same conclusion it had previously. The Medical Board reiterated that after his first surgery, Petitioner was able to "return to full active duty for approximately four year."

**Medical Board Report Addendum May 13, 2019 P. 2.** The Medical Board reported “following the second injury in 2016 MRI failed to show any acute changes in the thumb as well as any tears other than *generalized arthritis*. *Id* (emphasis added). The Medical Board determined “there is no objective evidence that indicates that the member’s disability was secondary to either injury in the application. There is no objective evidence in the newly supplied medical records that would lead us to modify our initial recommendation.” The Medical Board did not address Dr. Caligiuri’s contentions that Petitioner had traumatic arthritis in his thumb and that the surgery performed on him was necessitated by work-related injuries.

On September 24, 2019, the Board of Trustees reconsidered Petitioner’s entitlement to § 605-c Disability Retirement. At the September 24, 2019 meeting, Dr. Daly appeared. To quote one Trustee at the meeting Dr. Daly was of an opinion “very different from what the medical board said.” ***NYCERS September 24, 2019 Board Meeting Minutes P. 143, Lines 8-10.*** Dr. Daly found that the evidence submitted from Dr. Brown and Dr. Caligiuri was sufficient to show that Petitioner’s disability emerged from his first injury and worsened over time. ***Id P. 141, Lines 14-16.*** Dr. Daly suggested that the second injury may have exacerbated the damage to Petitioner’s thumb, but ultimately the first injury and Petitioner’s delay in having it surgically treated caused his disability. ***Id. P. 147, Lines 19-25; P. 148, Lines 1-6.*** Dr. Daly explained that traumatic arthritis is osteoarthritis where the precipitating factor is trauma to a joint. ***Id P. 149, Lines 6-11.*** The Board of Trustees then discussed whether the delay between Petitioner’s first injury and first surgery constitutes an intervening factor vis-a-vis proximate cause but did not make a determination on that issue. Ultimately, the Board of Trustees voted 5-5 and due to the tie, the recommendation of the Medical Board stood.

### Discussion

It is well settled that any individual subject to an administrative decision may challenge such determination pursuant to Article 78 of the CPLR. Moreover, under Article 78 this Court has the power to grant Petitioner the relief he/she is entitled to. **CPLR § 7806**. The Supreme Court cannot vacate an administrative decision if the result was rational and not arbitrary and capricious. ***Matter of Pell v. Board of Education of Union Free School, 34 N.Y.2d 222 (1974)***. Additionally, this court can only review whether the conclusions of such a hearing are rationally supported. ***Matter of Kinsella v. Board of Education, 64 A.D.2d 738 (3rd Dep't 1978)***.

In reviewing a determination of the Board of Trustees as to the existence of a disability, the Court must determine if the findings of the Board of Trustees and the Medical Board are supported by some credible evidence. ***Matte of Schlesinger v. New York Employees, 101 A.D.3d 736 (2d Dep't 2012)***. “[c]redible evidence is evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered.” ***Matter of Meyer v. Board of Trustees of the City of New York Fire Department, Article 1-B Pension Fund, 90 N.Y.2d 139, 147 (1997)***. Furthermore, there is an absence of credible evidence when a denial is premised on a summary conclusion that lacks any factual basis. ***Id.*** The Medical Board has the sole power to resolve any conflicting medical evidence and this Court may not substitute its own judgment for that of the Medical Board. ***Matter of Suppan v. New York City Retirement System, 37 A.D.3d 474, 475 (2d Dep't 2007)***. However, “fairness demands that all available relevant medical evidence be considered by the medical board and the board of trustees before petitioner's claim to accident disability retirement may properly be rejected.” ***Matter of Kiess v.***

***Kelly, 75 A.D.3d 416, 417 (1st Dep't 2010), citing Matter of Kelly v. Board of Trustees of Police Pension Fund, Art. 11, 47 A.D.2d 892, 893 (1st Dep't 1975).***

In the present case, this Court finds that the determinations of the Medical Board and Board of Trustees were not supported by credible evidence and are, therefore, arbitrary and capricious. Specifically, in its initial report, the Medical Board erroneously stated that Petitioner had full use of his fingers and hand, even though there was evidence to the contrary. *See, Medical Board Report July 19, 2018 P. 6 and NYCERS March 14, 2019 Board of Trustees Minutes P. 114, Line 1.* The Medical Board never corrected this statement in its two subsequent addenda to its initial report, even though the Board of Trustees noted this was an error. The Medical Board also focused on the fact that there was no re-tear to Petitioner's UCL, even though the disabling factor was arthritic in nature.

Finally, the Medical Board failed to consider the letter Dr. Caligiuri wrote stating that *traumatic* arthritis, or arthritis that was caused by a traumatic injury to a joint was the cause of Petitioner's disability. Moreover, the Medical Board failed to even address Dr. Caligiuri's diagnoses of traumatic arthritis. It should be reiterated that Dr. Caligiuri stated "[Petitioner] was found to have traumatic arthritis of the right first MCP joint which ultimately required an arthrodesis which was performed on 4/13/2017." Dr. Caligiuri further noted "the patient underwent 2 separate surgical procedures, years apart, for 2 separate work related injuries to his right thumb. The last procedure, which I performed, was thus necessitated by his work related injuries, and for no other reason." The Medical Board made the conclusory statement: "[i]n the new reports furnished by Br. Bennett Brown and the letter from Dr. Caligiuri dated April 29, 2019, there is no objective evidence that indicates that the member's disability was

secondary to either injury in the application." **Medical Board Report Addendum May 13, 2019**

**P. 2.** The Board of Trustees then affirmed the Medical Board's findings, by tie vote, notwithstanding its above-mentioned misstatement of facts and failure to consider traumatic arthritis, as the reason for Petitioner's disability.

Turning now to the branch of the Petition requesting an award of costs and disbursements including reasonable attorneys' fees, Petitioner does not provide any basis for an award of costs and disbursements. This branch of the Petition is, therefore, denied. Accordingly, it is HEREBY:

ORDERED that the branch of the Petition seeking to remand this matter to Board of Trustees of NYCERS is GRANTED. Upon remand the Board of Trustees is Ordered to consider the specific medical records from doctors Bennett Brown and Daniel Caligiuri that address causality of the injuries to Petitioner's right thumb as referred to in this decision/Order; and it is further

ORDERED that the branch of the Petition requesting costs and disbursements is DENIED.

This is the Decision and Order of the Court.

ENTER

  
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LOREN BAILY-SCHIFFMAN, JSC