SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK **PART** 11

Justice

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CARMEN RIVERA,

Petitioner,

- v -

DERMOT F. SHEA, AS POLICE COMMISSIONER OF THE CITY OF NEW YORK, AND AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THE NEW YORK CITY POLICE PENSION FUND, KEVIN HOLLORAN, AS EXECUTIVE DIRECTOR OF THE NEW YORK CITY POLICE PENSION FUND, THE BOARD OF TRUSTEES OF THE NEW YORK CITY POLICE PENSION FUND, THE CITY OF NEW YORK

Respondent.

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INDEX NO. 157113/2021

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

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

Petitioner brings the instant petition alleging that that the Board of Trustees determination that petitioner's injuries did not occur while she was in city service thus denying her application for Accidental Disability Retirement ("ADR") was arbitrary and capricious. Respondents oppose the instant petition and contend that petitioner failed to meet her burden of showing that her injury occurred while in city service, as required by Admin. Code § 13-252.

Facts

Petitioner, although now retired, was a New York City Police Officer on July 25, 2018. Petitioner was assigned to work at One Police Plaza, a location other than her regular command post in Brooklyn. As such, petitioner was entitled to what is referred to as "portal to portal time", which is payment for the additional travel time for officers traveling to posts outside of

their normal posts. Here, petitioner received an hour and fifteen minutes of paid time for travel to and from One Police Plaza.

On July 25, 2018 at approximately 6:05 a.m., while petitioner was in route to One Police Plaza for her tour that was scheduled to begin at 7:05 a.m., petitioner was struck by a chain link fence. Petitioner was pinned to a concrete barrier and received injuries to her neck, head, upper, middle and lower back, right leg, right shoulder, right elbow, right wrist and right hand. As a result of the injuries she sustained, petitioner went to the emergency room. Subsequently, petitioner applied for ADR benefits and the Medical Board of the Police Pension Fund found that petitioner is disabled from performing the duties of a police officer and that her disability was related to the July 25, 2018 accidental injuries. Accordingly, the Medical Board recommended approval of the application for an ADR benefit. However, upon review by the Board of Trustees, they indicated that petitioner's injuries did not occur while she was in city service thus petitioner's ADR application was denied.

Standard of Review

Article 78 review is permitted, where a determination was made that "was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed…." CPLR §7803(3).

"Arbitrary" for the purpose of the statute is interpreted as "when it is without sound basis in reason and is taken without regard to the facts." *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* "Rationality is what is reviewed under both the substantial

evidence rule and the arbitrary and capricious standard." *Id.* If the court reviewing the determination finds that "[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed." *American Telephone & Telegraph v State Tax Comm'n* 61 NY2d 393, 400 [1984].

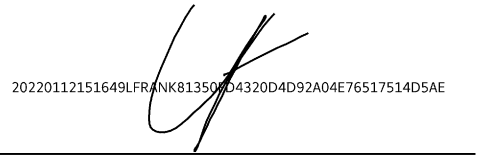
It is well established that the court should not disturb an administrative body's determination once it has been established that the decision is rational. See *Matter of Sullivan Cnty. Harness Racing Ass'n, Inc. v. Glasser*, 30 NY2d 269 [1972]; *Presidents' Council of Trade Waste Assns. v New York,* 159 AD2d 428, 430 [1st Dept 1990].

Discussion

Here, the ultimate issue appears to be whether "portal to portal" time is deemed city service for the purposes of Admin. Code § 13-252. Based on the Board of Trustees determination, they have found that such time is not city service for the purpose of the statute and this Court is required to give that determination deference.

Petitioner argues that because she received payment for her travel time and because there may have been a previous ADR determination in 2006 made for a detective while on "portal to portal" time that the determination of the Board of Trustees is arbitrary and capricious. The Court however disagrees, based on prior precedent binding on this Court.. As stated in *Crowley v. Brown*, deference must be given to the respondents in its interpretation that excludes "portal to portal" time. 609 NYS2d 11 [1st Dept 1994]. Respondents have also provided a plethora of case law where it has been determined that whether or not an individual is paid, if the action in engaged in at the time of the accident is not city service, a denial of benefits is not unreasonable. See *Alessio v N.Y. City Emps' Ret. Sys.*, 67 NY2d 978, 979 [1986]; *Walsh v Scoppetta*, 18 NY3d 850, 852 [2011]. Based on the foregoing, it is hereby

ADJUDGED that the petition is denied.



1/12/2022
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE