

**Lynn v Nigro**

2022 NY Slip Op 30360(U)

February 4, 2022

Supreme Court, New York County

Docket Number: Index No. 157999/2021

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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JOHN LYNN,

Petitioner,

- v -

DANIEL NIGRO, THE BOARD OF TRUSTEES AND THE
MEDICAL BOARD OF THE NEW YORK CITY FIRE
DEPARTMENT, ARTICLE I-B PENSION FUND

Respondent.

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INDEX NO. 157999/2021
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

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

The instant petition arises out of respondents' denial of petitioner's accident disability retirement ("ADR") application. Petitioner contends that the denial of his application that sought ADR was irrational, arbitrary, and capricious. In opposition, respondents contend that the findings of Medical Review Board were rational and should not be disturbed. For the reasons set forth below the petition is denied.

Background

Petitioner was employed by the New York City Fire Department (FDNY) as a Chief Fire Marshall for 36 years. On November 29, 2018, approximately one month before petitioner was forced to retire after attaining the mandatory retirement age of 65, he was involved in a motor vehicle accident. Petitioner was operating an FDNY vehicle while driving over the Brooklyn Bridge and was rear-ended in a three-vehicle collision. Thereafter, petitioner filed an application for service-connected disability, based on the injuries sustained as a result of the motor vehicle

accident. Petitioner, as well as his medical records, were examined by two panels of the FDNY's Pension Fund Medical Board (Medical Board). The Medical Board determined that petitioner is not disabled; accordingly, the Board of Trustees adopted the Medical Board's findings.

Therefore, other issues, such as causation were not reached.

### **Standard of Review**

Article 78 review is permitted, where it is alleged a determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion...." NY 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].

To receive ADR, a member must establish that they are "physically or mentally incapacitated for the performance of city-service, as a natural and proximate result" of an accidental injury received in such city-service. Administrative Code §13-353. The application for ADR involves a two-tier administrative process. *See Meyer v Bd. of Trs. of the New York City Fire Dep't, Article I-B Pension Fund*, 90 NY2d 139, 144 [1997].

First, the “threshold” determination of whether the applicant is deemed disabled is left solely to the Medical Board. *Borenstein v New York City Emps.’ Ret. Sys.*, 88 NY2d 756, 760 [1996], rev’g 218 AD2d 532 [1st Dept 1995]. A Medical Board’s disability determination will be sustained if it is based on “some credible evidence.” *Id.*

“In an article 78 proceeding challenging the disability determination, the Medical Board’s finding will be sustained unless it lacks rational basis, or is arbitrary or capricious” *Id.* at 760 (internal citations omitted).

### **Discussion**

Here, the Court finds that the Medical Board based its determination on ‘some credible evidence’ as required by precedent. Petitioner relies on *Matter of Meyer v Board*, 90 NY2d 139 [1997], to support his position that the Medical Board’s findings are insufficient. However, in *Meyer* the issues before the Court of Appeals, in all four cases on appeal, involved the denial of ADR based on the denial of the second prong of the analysis, causation. While *Meyer* is instructive, it is not on point in the instant petition. Notably, the Court of Appeals reversed all the Appellate Division decisions that annulled the findings of the Medical Board.

The Medical Board conducted its own examination of the petitioner as well as a review of medical records and concluded that petitioner was not disabled. While upon a review of the records this Court may not agree with the findings, the role of this Court is not to supplant the judgment, reasoning and rational of the underlying agency determination. *See Matter of Seiferheld v Kelly*, 70 AD3d 460, 462 [1st Dept 2010]. The sole role of the Court, at this juncture, is to determine whether the Medical Board’s findings are arbitrary and capricious and supported by ‘some credible evidence’.

The Medical Board, divided into two panels, found that petitioner was not permanently disabled from duty because of his cervical, thoracic, or lumbar spine, and the other panel determined that petitioner is not permanently disabled because of his left shoulder or left knee. Among other things, the Medical Board found that petitioner’s range of motion were within the normal range and that petitioner’s back "has some multilevel cervical disc degeneration although nothing abnormal for his age." *See* NYSCEF Doc. 62. While the Medical Board did mention petitioner’s subjective complaints of pain, it found that there were “no objective findings to substantiate the claim of permanent disability.” *See* NYSCEF Doc. 19. This Court finds that based upon a review of the Medical Board’s findings, its conclusions were rational and reached based on the examination and records before it. Accordingly, it is hereby

ADJUDGED that the petition is denied.

  
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**LYLE E. FRANK, J.S.C.**

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