

Levitant v City of N.Y. Dept. of Transp.
2023 NY Slip Op 30297(U)
January 30, 2023
Supreme Court, New York County
Docket Number: Index No. 156931/2022
Judge: Lori S. Sattler
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LORI S. SATTLER PART 02TR

Justice

-----X

ARKADY LEVITANT

Plaintiff,

- v -

THE CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION,

Defendant.

-----X

INDEX NO. 156931/2022
MOTION DATE 11/14/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

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

In this Article 78 proceeding, Petitioner Arkady Levitant ("Petitioner") seeks a judgment setting aside and annulling the Final Determination of the Respondent New York City Department of Transportation ("DOT") dated April 9, 2022, which denied his application for a parking permit for people with disabilities ("PPPD"). Respondent opposes the petition.

Petitioner contends that the DOT's determination was arbitrary and capricious because the DOT had previously granted Petitioner a PPPD permit based on the same condition. He claims his condition is disabling and that he had a permit from 2006 through 2017. Thereafter, when he was first denied a PPPD, he filed an Article 78 proceeding, the DOT determination was subsequently rescinded, and he received a permit for the period beginning August 27, 2018 and ending August 27, 2020. He points to that prior proceeding, which was resolved by stipulation, and asserts that the grounds for the earlier denial are no different from the current denial. He claims that his proof demonstrates that he has not recovered from a permanent physical disability and that his mobility is more impaired than it was several years ago.

Respondent notes that the prior permit application was denied but was subsequently granted on the condition that Petitioner be reevaluated in two years and upon reevaluation the request was denied. It states that the May 7, 2021 determination denying the permit was based on a review of the medical records submitted by a certifying physician of the New York City Department of Health and Mental Hygiene (“DOHMH”) (NYSCEF Doc No.17). The DOHMH PPPD certification status form submitted to the DOT and sent to Petitioner specifically states: “[i]f appealing this decision, it is important that you consult with your physician and send the most recent documents . . . that are checked below.” The items checked included neurology exam notes, lower EMG/NS, orthopedic exam notes, and an x-ray of the right foot (*id.*). The DOT sent out the decision denying the PPPD request on May 24, 2021 (NYSCEF Doc No. 16).

Upon appeal of the decision, Petitioner did not submit an EMG/NCS test of lower extremities and exam notes or an x-ray of the right foot (NYSCEF Doc No. 20). On April 4, 2022, Petitioner’s appeal was denied on a PPPD certification status form with a finding that after review by a second certifying physician, the documentation submitted did not support a finding of “permanent disability seriously impairing mobility” (NYSCEF Doc No. 14).

The DOT may issue a PPPD where the DOHMH or a physician appointed by the DOHMH certifies the applicant has a permanent disability seriously impairing mobility (NYC Charter § 2903[a][15][(a)]. Title 24, Section 16-02 of the Rules of the City of New York (“RCNY”) lists the specific conditions that constitute a permanent disability. The certification process for a decision rendered by the DOHMH or a physician appointed by the DOHMH is set forth in 24 RCNY §16-04 and states in part: “[w]here certification has been denied, the Form shall indicate whether the determination was based upon the fact that medical documentation presented does not support a finding of ‘permanent disability seriously impairing mobility . . . ’”

A determination granting certification and the issuance of a PPPD may be conditioned on a future assessment to determine whether the applicant still qualifies and is not subject to appeal (24 RCNY §16-04[b]). Pursuant to 24 RCNY § 16-05, an appeal of a determination must be made within thirty business days of service of the decision denying certification upon the applicant.

Article 78 proceedings provide for judicial review of administrative actions where a determination made 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 Bd. of Educ.*, 34 NY2d 222, 231 [1974]). The Court must review the entire record and “determine whether there exists a rational basis to support the findings upon which the agency’s determination is predicated” (*Purdy v Kreisberg*, 47 NY2d 354, 358 [1979]).

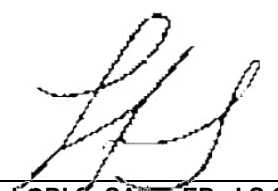
In this case, the DOHMH certification form clearly states the finding that Petitioner did not demonstrate a “permanent disability seriously impairing mobility.” The form further directs what additional documentation will be needed if an appeal is taken. Petitioner did not supply all of those documents upon appeal. Specifically, Petitioner did not submit the lower EMG/ENS, exam notes and an x-ray of the right foot. As Petitioner failed to submit the requested documentation, there was a rational basis to support the agency’s determination and it cannot be found that Respondent acted arbitrarily or capriciously. Although Petitioner contends his prior grant of the permit shows that he does, in fact, suffer from a permanent disability, that permit was granted provisionally and was subject to a subsequent review upon its expiration as permitted under 24 RCNY §16-04(b). Petitioner’s interpretation of the reasons for the issuance of the prior permit are not supported by the record.

Accordingly, for the reasons set forth herein, it is hereby:

ADJUDGED that the petition is denied and the proceeding is dismissed.

1/30/2023

DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE