

**Matter of Murchinson-Hunt v New York City
Employees' Retirement Sys.**

2023 NY Slip Op 30689(U)

March 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 516272/2022

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6th day of March 2023

HONORABLE FRANCOIS A. RIVERA

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In the Matter of the Application of MERCEDES MURCHINSON-HUNT,

Petitioner,

- against -

DECISION, ORDER & JUDGMENT
Index No.: 516272/2022

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM and the BOARD OF TRUSTEES OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM,
Respondents,

For an Order and Judgment Under Article 78 of the New York Civil Practice Law and Rules and for other relief.

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Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of petition filed on June 6, 2022, under motion sequence one, petitioner Mercedes Murchinson-Hunt (hereinafter petitioner or Murchinson-Hunt) seeks an order and judgment pursuant to CPLR Article 78:

- a. Vacating and annulling the final determination, dated February 11, 2022, of Respondents, New York City Employees Retirement System (hereinafter NYCERS) and the NYCERS Board of Trustees (hereinafter Board of Trustees) (collectively as the respondents);
- b. Finding that the final determination, which is the subject of the instant Article 78 proceeding, contravenes the applicable statutory and decisional law;
- c. Finding that the final determination is arbitrary and capricious;

- d. Directing the Board of Trustees to grant the petitioner the benefits that she is entitled to retroactive to the date of her application;
- e. Granting the petitioner's costs and disbursements, including reasonable attorneys' fees;
- f. Awarding all further relief, equitable or otherwise, to which the petitioner is entitled and/or which the Court deems just and proper;
- g. Alternatively, remanding the matter to respondents for the Board of Trustees to independently evaluate the evidence of causation and review the Medical Board's recommendation.

This petition is opposed by the respondents.

- Notice of Petition
- Verified Petition
- Exhibits A to M
- Answer
- Exhibits A to I
- Memorandum of Law in Opposition
- Reply Affirmation
- Affidavit of Petitioner

BACKGROUND

On June 6, 2022, petitioner Murchinson-Hunt commenced the instant CPLR Article 78 proceeding against respondents NYCERS and the Board of Trustees by electronically filing a notice of petition, verified petition, thirteen annexed exhibits labeled A through M, (hereinafter the commencement papers) and a request for judicial intervention with the Kings County Clerk's office (hereinafter KCCO).

On October 26, 2022, the respondents filed their verified answer with nine annexed exhibits labeled A through I and a memorandum of law. Their verified answer contains ninety-four allegations of fact including eight affirmative defenses.

Murchinson-Hunt's verified petition alleges the following salient facts. The petitioner was employed by the New York City Department of Correction from 2006 to 2018.

On June 27, 2014, the petitioner was injured when an inmate, after becoming enraged threw his food tray, containing his meal and drinks, at the petitioner (hereinafter the June 2014 incident). After being struck with the tray, the petitioner fell backwards and hit a metal drawer that was ajar and affixed to the wall. The petitioner immediately experienced numbness and pain for which she sought treatment.

Approximately five weeks after the June 2014 incident, the petitioner was examined and treated by Dr. Gus Katsigiorgis (hereinafter Dr. Katsigiorgis). In August 2014, Dr. Katsigiorgis noted that the petitioner was complaining of neck, shoulder, and hand pain. Particularly, Dr. Katsigiorgis, after examining the cervical spine, noted that the petitioner was experiencing cervical spine pain radiating to the left trapezius region, difficulty with her shoulder region, paraspinal muscle tenderness and restricted range of motion.

Although the petitioner continued her employment from the June 2014 incident until she was fully disabled in 2018, the petitioner alleges that she continued to seek non-surgical treatment as the pain did not subside and as a result, she took many days off work due to her injuries.

On December 2, 2019, the petitioner applied for Disability Retirement Benefits pursuant to Retirement and Social Security Law § 507-c, which regulates performance of duty benefits and § 507-a, which regulates accidental disability benefits. The petitioner's

application stated that her disability was due to injuries stemming from the June 2014 incident.

The petition further alleges that in February 2020, reports were generated regarding the June 2014 incident. The first report dated February 3, 2020, was referred to as an Employer's Report. It included an employee statement relating to the June 2014 incident. However, the petition alleges that the Employer Report described the June 2014 incident as an inmate splashing an unknown substance upon the petitioner's shoulders and neck. The second report was a Worker's Compensation system general information report, dated February 5, 2020. In this report the nature of the injury was described as a foreign body affecting the vertebrae and upper arm.

The petitioner provided a response to a questionnaire for disability retirement benefits, dated February 6, 2020. In the response, the petitioner identified her neck as the disabling body part.

On October 19, 2021, the petitioner received notice that the Medical Board's recommendation was to deny her December 2, 2019, Application pursuant to Retirement and Social Security Law § 507-c. The recommendation was based on its September 27, 2021 report. The report was based upon a review of medical records and interviews with petitioner, wherein the petitioner described the June 2014 incident as an inmate throwing a lunch tray with food and drinks, which struck her in the right shoulder region. The petitioner then fell backwards hitting the left side of her neck and her left shoulder region on an open metal drawer affixed to the wall.

The petitioner contends that the Medical Board erroneously concluded that the June 2014 incident was not the cause of her injuries. The Medical Board report contained the following findings. First, the Medical Board noted that the petitioner worked in full duty capacity as a Correction's Officer for four years following the June 2014 incident. Secondly, the Medical Board reviewed the petitioner's a 2014 MRI of the cervical spine following the June 2014 incident and found that it did not reveal any acute condition. Furthermore, the Medical Board found that prior to surgery the petitioner pursued non-surgical interventions including physical therapy, medication, and pain management. The Medical Board also concluded that the disabling condition occurred after the petitioner underwent spinal fusion surgery in 2019.

The petitioner contends that the Medical Board's report omitted or overlooked pertinent information. The Medical Board relied on the Employer Report which mischaracterizes the June 2014 incident as involving a splash of liquid. The Medical Board is alleged to have disregarded the petitioner's testimony wherein she describes being struck by a tray and falling upon an open drawer.

On February 10, 2022, a Board of Trustees meeting was held. The Board of Trustees questioned the petitioner, heard the arguments of the petitioner's counsel, and considered the Medical Board's report. At the meeting, the petitioner and her counsel contended that the pain stemming from the June 2014 incident had not subsided and she was still undergoing treatment. Upon review of the petitioner's medical records, the Board of Trustees found that there was a significant gap in treatment between July 2016

and 2018. Based upon this gap, the Board of Trustees concluded that the petitioner's disabling condition was the result of a degenerative diseases rather than trauma.

On February 11, 2022, Murchinson-Hunt received a final determination letter from NYCERS indicating that her application pursuant to Retirement and Social Security Law § 507-c had been denied by the Board of Trustees.

In the instant special proceeding, Murchinson-Hunt seeks, among other things, to vacate and annul the determination by the respondents, as well as an award of performance of duty disability benefits retroactive to the date of her application for retirement disability benefits.

MOTION PAPERS

The petitioner's papers consist of a notice of petition, verified petition, and thirteen annexed exhibits labeled A through M. Exhibit A is a letter from NYCERS dated February 11, 2022. Exhibit B is described as a Medical Board Report which contains seven pages, dated September 27, 2021. Exhibit C is a copy of the Application for Disability Retirement, notarized on July 30, 2022. Exhibit D contains Medical Records from Island Musculoskeletal Care, MD., PC. Exhibit E contains Medical Records from Pain Management Center of Long Island by Dr. Rauchwerger. Exhibit F is a copy of an Operative Report from Holy Name Medical Center by Dr. Okubadejo. Exhibit G is a Treating Physician's Summary Report from The City of New York Department of Correction. Exhibit H is described as Workers' Compensation System Report which contains seven pages dated February 5, 2020. Exhibit I is a copy of an Employer's Report of Work-Related Injury/Illness dated February 3, 2020. Exhibit J is a file from NYCERS described as Agency Report on Accident dated February 11, 2020. Exhibit K is a copy of a Questionnaire for Applicant for Disability Retirement from NYCERS dated December 2, 2019.

Exhibit L is a copy of a transcript from NYCERS's Board Meeting which contains forty-seven pages dated February 10, 2022. Exhibit M is described as 2017 Treatment Records which contains fourteen pages.

The answer by the respondents consists of a verified answer with nine annexed exhibits labeled A through I and a memorandum of law. Exhibit A contains a copy of the petitioner's transfer of pension dated June 22, 2006, and an application for membership from NYCERS dated July 25, 2006. Exhibit B is described as an incident report which contains ten pages. Exhibit C is a copy of an application for disability retirement and a copy of a questionnaire for applicants for disability retirement dated December 2, 2019. Exhibit D is a notice for an interview/examination with NYCERS dated September 1, 2021. Exhibit E is the medical board report from NYCERS dated September 27, 2021. Exhibit F is described as the petitioner's medical documentation that contain copies of medical records from Island Musculoskeletal Care, Pain Management Center of Long Island, Holy Name Medical Center, NYU Langone Radiology, and South Nassau Communities Hospital. It also includes copies of the treating physician's Summary Reports from the City of New York Department of Correction. Exhibit G contains copies of letters from NYCERS dated October 19, 2021, and January 21, 2021, which informed the petitioner regarding the Medical Board's determination in the meeting held on September 27, 2021, and her right to appeal. Exhibit G also includes a copy of a Medical Board Report from NYCERS. Exhibit H is the transcript of a video conference meeting dated February 10, 2022, held by NYCERS Board of Trustees which contains fifty-six pages. Exhibit I is a copy of a letter dated February 11, 2022, from NYCERS which informed the petitioner of the determination of the meeting held on February 10, 2022.

LAW AND APPLICATION

In this Article 78 proceeding, petitioner, a retired employee of the New York City Department of Correction (“DOC”), seeks a judgment from this Court, inter alia, (1) vacating and annulling the respondents Final Determination date February 11, 2022 denying the petitioner's performance of duty disability retirement application; (2) directing the Board of Trustees to grant the petitioner the benefit that the petitioner is entitled to retroactive to the date of her application; or (3) alternatively, remanding the matter to Respondents for the Board of Trustees to independently evaluate the evidence of causation, and to review the Medical Board’s recommendation.

Petitioner filed an application with NYCERS on December 2, 2019, for performance of duty disability retirement pursuant to Retirement and Social Security Law § 507-a and 507-c. The claim was based on the June 27, 2014, incident in which an inmate’s violent act caused her to sustain an injury. On September 27, 2021, the Medical Board reviewed her medical records, interviewed her, conducted a physical examination, and prepared a medical report. The medical report contained, among other things, a case history, and the Medical Board’s findings, conclusions, and recommendation.

The Medical Board concluded that the petitioner was disabled from full duty as a correction officer due to her cervical spine disability. The Medical Board also concluded that the June 27, 2014, incident was not the competent casual factor of the petitioner’s cervical spine disability.

The respondents interposed an answer to the petition which included documentary support for their conclusion. The conclusion was based largely in part on the fact that the

petitioner worked in full capacity as a Correction Officer from 2014 to 2018. Also, the fact that an MRI taken in August of 2014, after the June 27, 2014, incident, showed no traumatic injury but rather multilevel degenerative changes. After the June 27, 2014, incident, the petitioner participated in pain management and physical therapy prior to undergoing surgical intervention in 2019. Nevertheless, she continued to work in full capacity until 2018. The Medical Board recommended that petitioner's application for Disability Retirement pursuant to Retirement And Social Security Law § 507-a be approved and that her application for Performance of Duty Disability Retirement pursuant to Retirement and Social Security Law § 507-c be denied.

In a proceeding under CPLR Article 78, judicial review of an administrative agency's determination is limited in scope to determining whether the challenged agency decision had a rational basis (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-31 [1974]). In the context of New York's public retirement systems, an applicant for a disability pension bears the burden of establishing, as a matter of law, that a causal relationship exists between the service-related incident and the disability (*see Connelly v. Bd. of Trs. of the New York City Fire Dep't, Art. 1-B Pension Fund*, 237 AD2d 602, 602 [2d Dept 1997], citing *Matter of Draves v Board of Trustees*, 203 AD2d 568, 569 [2d Dept 1994]) and there is no presumption in his or her favor which the Board of Trustees must overcome (*see Matter of Archul v Board of Trustees of N.Y. City Fire Dept., Art. 1B Pension Fund*, 93 AD2d 716, 717 [1st Dept 1983], *affd* 60 NY2d 567 [1983]). Specifically, to qualify for performance-of-duty disability retirement benefits, correction

officers, such as the petitioner, must show that they are “physically or mentally incapacitated for the performance of duties as the natural and proximate result of an injury, sustained in the performance or discharge of his or her duties by, or as a natural and proximate result of,” an act of any inmate (*see* Retirement and Social Security Law § 507-c [a]). The applicant has the burden of proving such incapacity and causation (*Califano v. DiNapoli*, 147 AD3d 1177, 1177-78 [3d Dept 2017]).

The Medical Board determines whether a member applying for accidental disability retirement benefits is disabled (*see* Administrative Code of City of NY § 13—167[b]; *Vargas v New York City Employees’ Ret. Sys.*, 95 AD3d 1345, 1346 [2nd Dept 2012]). The Board of Trustees is bound by a Medical Board finding that the applicant is disabled (*id.*). In cases where the Medical Board finds that the applicant is disabled, the Medical Board must further determine the causation of the disability, and make a recommendation to the Board of Trustees, which has the ultimate authority to determine causation (*see Matter of Borenstein v New York City Employees’ Retirement System*, 88 NY2d 756 at 760-61 [1976]). The Board of Trustees must then make its own evaluation as to the Medical Board's recommendation regarding causation (*see Meyer v Bd. of Trs. of the New York City Fire Dep’t, Art. 1-B Pension Fund*, 90 NY2d 139, 145-46 [1997]); *Suppan v New York City Employees’ Ret. Sys.*, 37 AD3d 474, 475 [2nd Dept 2007]).

The determination of the Board of Trustees and the Medical Board is conclusive if it is not irrational, arbitrary, or capricious (*Suppan*, 37 AD3d at 474). In the context of pension disability cases, substantial evidence is construed to require “some credible evidence” (*Borenstein*, 88 NY2d at 756). In *Borenstein*, the Court further held that a

review by the Medical Board of the medical record submitted by the petitioner and an examination of the petitioner constituted credible evidence and that the Medical Board's determination regarding disability was, therefore, neither arbitrary nor capricious (*id.* at 760-761).

It is undisputed that the Medical Board reviewed the medical evidence submitted by the petitioner, interviewed, and examined her. The Medical Board concluded that the petitioner failed to establish that the June 27, 2014, incident was the competent causal factor of her disability. The Medical Board's findings were based on, among other things, its determination that the MRIs contemporaneous to the incident showed no acute findings to the petitioner's cervical spine and that petitioner worked in full duty capacity until 2018.

First, the Medical Board, in its review of the petitioner's medical evidence, rationally determined that the MRIs taken contemporaneously with the July 27, 2014, incident revealed that the petitioner suffered from no acute injuries. Rather, the MRIs revealed that the petitioner suffered from a number of degenerative diseases. For example, the MRI of the petitioner's cervical spine taken on August 5, 2014, revealed multilevel diffuse degenerative disc disease and degenerative disease of the vertebrae of the neck.

The medical records provided by the petitioner showed that she continued to suffer from such degenerative diseases. After an examination by her doctor for neck pain on September 4, 2018, she was diagnosed with two degenerative diseases: cervical

spondylosis and cervical radiculopathy. An additional exam on October 16, 2018, and January 29, 2019, found the same.

The Medical Board's review of the petitioner's medical records, along with the fact that the petitioner worked full duty for four years subsequent to the July 27, 2014, incident until she retired in 2018, led it to, rationally and reasonably, make the recommendation to the Board of Trustees that the incident was not the competent causal factor of the petitioner's disability.

At the February 10, 2022, Board of Trustees meeting, the petitioner and her attorney appeared to appeal the Medical Board's recommendation regarding causality. The petitioner's attorney argued that a history of continuous treatment from the June 27, 2014, incident onward was evidence that the incident was the proximate cause of her disability. The Board of Trustees considered the petitioner's submissions and arguments. The Board of Trustees also considered, inter alia, the fact that the MRI fact that an MRI taken in August of 2014, after the June 27, 2014, incident, showed no traumatic injury but rather multilevel degenerative changes. The records also established that the petitioner continued to work in full capacity until 2018. These facts alone rendered the Board of Trustee's decision to accept the Medical Board's determination as to causality rationale. Moreover, the Board of Trustees may rely on the Medical Board's determination and is permitted to do even where there is conflicting evidence (*see Matter of Bailey v Kelly*, 11 AD3d 208, 209 [1st Dept 2004]).

In sum, the petitioner failed to meet her burden of proof that her disability was caused by the June 27, 2014, incident. Accordingly, the Medical Board's opinion that the

incident was not the competent causal factor of her disability was supported by credible evidence and, as such, the Board of Trustees' adoption of the Medical Board's recommendation and the denial of the petitioner's performance of duty disability retirement application was proper and neither arbitrary nor capricious.

The petitioner has also sought an award of costs, disbursements, and attorney's fees. CPLR 8106 provides that costs upon a motion may be awarded to any party, in the discretion of the court, and absolutely or to abide the event of the action. CPLR 8101 provides that the party in whose favor a judgment is entered is entitled to costs in the action, unless otherwise provided by statute or unless the court determines that to so allow costs would not be equitable, under all of the circumstances. The party to whom costs are awarded is entitled to recover reasonable and necessary expenses as are taxable according to course and practice of the court, by express provision of law or by order of the court (CPLR 8301 [a]). The petitioner has not obtained a judgment in the petitioner's favor on the petition and is, therefore, not entitled to costs pursuant to either CPLR 8101 or 8106; or disbursements pursuant CPLR 8301.

Under the general rule, attorney's fees are incidents of litigation, and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, by statute or court rule (*Pickett v 992 Gates Ave. Corp.*, 114 AD3d 740 [2d Dept 2014], citing *Hooper Assoc. v. AGS Computers*, 74 NY2d 487, 491 [1989]). Here, the movants have offered no factual or legal basis for an award of attorney's fees.

CONCLUSION

The branch of the petition of Mercedes Murchinson-Hunt seeking an order vacating and annulling the final determination, dated February 11, 2022, of Respondents New York City Employees Retirement System and the NYCERS Board of Trustees is denied.

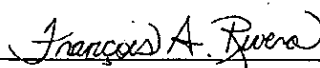
The branch of the petition Mercedes Murchinson-Hunt of seeking an order granting the petitioner costs and disbursements, including reasonable attorneys' fees is denied.

The branch of the petition of Mercedes Murchinson-Hunt seeking an order remanding the matter to respondents for the Board of Trustees to independently evaluate the evidence of causation and review the Medical Board's recommendation is denied.

The petition is hereby dismissed.

The foregoing constitutes the decision, order, and judgment of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.