

Santana v Sewell

2023 NY Slip Op 31158(U)

April 13, 2023

Supreme Court, New York County

Docket Number: Index No. 153650/2022

Judge: Erika M. Edwards

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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LISA SANTANA,

Petitioner,

- v -

KEECHANT SEWELL, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees of the Police Pension Fund, Article II and THE BOARD OF TRUSTEES of the New York City Police Pension Fund, Article II,

Respondents.

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INDEX NO. 153650/2022

MOTION DATE 04/28/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 19, 20, 21, 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

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

Upon the foregoing documents, the court denies Petitioner Lisa Santana’s (“Petitioner”) Article 78 Verified Petition and dismisses the Verified Petition.

Petitioner commenced this Article 78 proceeding against Respondents Keechant Sewell, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees of the Police Pension Fund, Article II and The Board of Trustees of the New York City Police Pension Fund, Article II (“PPF Board”) (collectively, “Respondents”). Petitioner seeks a judgment reviewing and annulling Respondents’ denial of Petitioner’s request for a line of duty accident disability retirement (“ADR”) allowance, pursuant to New York City Administrative Code §13-252; a declaration that said determination was arbitrary, capricious, unreasonable and unlawful; an order directing Respondents to retire Petitioner with an ADR allowance retroactive to the date of her service retirement as a matter of law; an order directing a hearing with witnesses, pursuant to CPLR 7804(h), to determine whether Respondents’ actions and

determinations were arbitrary or capricious; and an order, pursuant to CPLR 2307(a), for the production of documents related to this matter.

Petitioner was appointed as a police officer with the New York City Police Department (“NYPD”) on January 20, 2004. She worked continuously as a uniformed officer and was a member of the Police Pension Fund until her retirement in February 2019. Petitioner alleges in substance that on March 26, 2011, she sustained career ending line-of-duty injuries to both knees when she slipped on a piece of carbon paper on the rear stairwell while working at the 46th Precinct, which caused her to fall down the steps. Petitioner further alleges that the accident caused her to become disabled and forced her to retire because she was unable to perform her duties as a police officer due to her injuries. The accident was witnessed by Petitioner’s partner, Police Officer Vanessa S. Anza.

Petitioner submitted a Line of Duty Injury Report on the day of her fall, but it was lost by NYPD and another report was submitted on January 27, 2014. Over the next several years, Petitioner sought to receive ADR benefits instead of ordinary disability retirement (“ODR”) benefits, but her requests were denied. Respondents determined that there were discrepancies in the initial version of the events and subsequent evidence as to whether Petitioner slipped on carbon paper. After recommendations for Petitioner to receive ADR benefits, Respondents reversed these determinations and granted Petitioner ODR benefits. The PPF Board determined in substance that Petitioner failed to prove that she slipped on carbon paper, so her disability was caused by an “incident” and not an “accident” as defined by the statute.

Petitioner brought a previous Article 78 Petition challenging the PPF Board’s denial of her ADR application as being arbitrary and capricious under this court’s index number 100869/2019. In a decision and order, dated April 7, 2021, this court granted in part Petitioner’s

Petitioner and remanded the matter to the PPF Board for a new investigation and reconsideration of its determination to deny Petitioner ADR and its finding that Petitioner was caused to be disabled from a line of duty “incident” and not an “accident,” as defined by New York City Administrative Code § 13-252. Additionally, the court directed the PPF Board to authorize a new investigation to determine the circumstances and cause of Petitioner’s fall, including, but not necessarily limited to, whether carbon paper on the steps caused and/or contributed to Petitioner’s fall, which should include witness interviews of those who witnessed Petitioner’s fall and those who have knowledge of the substance of the initial line of duty injury paperwork prior to the paperwork being lost by the New York City Police Department (“NYPD”).

Following the remand, the investigation was reopened and numerous additional interviews were conducted. Although Petitioner was not interviewed, her partner, P.O. Anza was re-interviewed. It was determined in substance that although there were roll call papers and other objects on the stairs in the vicinity where Petitioner fell which could have caused a hazard, the Lieutenant who conducted the investigation did not believe that Petitioner slipped on carbon paper or that carbon paper played a role in her injury. Therefore, the PPF Board again classified Petitioner’s injuries as a result of an “incident,” instead of an “accident.”

As such, on January 12, 2022, the PPF Board again voted in a 6-6 tie, which meant that they retired Petitioner with ODR benefits, instead of ADR benefits. The PPF Board noted in substance that although the original Line of Duty Incident Report may have been lost, the Line of Duty Control Log from June 20, 2011, and the Line of Duty form that was submitted on April 22, 2014, both indicated that Petitioner slipped and fell while she was walking down a set of stairs, but there was no mention of carbon paper. They further stated that the only mention of

carbon paper was from P.O. Anza's witness statement, which was filed years later on February 26, 2015.

Petitioner argues in substance that even after the additional investigation, Respondents' denial of Petitioner's ADR benefits was still arbitrary, capricious, unreasonable and unlawful. Petitioner argues that it disregarded evidence that clearly demonstrated that there was carbon paper on the steps at the time of Petitioner's fall and that Petitioner slipped on the carbon paper which caused her to fall and injure herself. Therefore, Petitioner argues that her injuries were caused by an "accident," that she is entitled to an ADR allowance as a matter of law and that Respondents' denial of her application should be annulled.

Respondents oppose Petitioner's Petition and argue in substance that Respondents' determination that Petitioner is not entitled to ADR is supported by credible evidence and was not arbitrary or capricious. Respondents argue that over the years, there has been differing accounts of the incident and the PPF Board credited contemporaneous accounts over subsequent accounts. Respondents argue that the contemporaneous documents in the record make no reference to the carbon paper, including the Line of Duty Injury Report, a Line of Duty Control Log entry, an Aided Report, and Petitioner's medical records from March, April and June 2011. It was only Petitioner's partner's witness statement nearly four years after the fall that mentioned carbon paper.

Additionally, Respondents argue that on remand, the PPF Board did exactly as the court requested and authorized a new investigation and conducted numerous interviews of individuals with knowledge of the initial line of duty injury paperwork and fall. The new investigation did not adduce any additional evidence to support Petitioner's claim that she slipped on carbon paper and did nothing to tip the scales in Plaintiff's favor. Respondents further argue that even P.O.

Anza failed to mention that Petitioner slipped on carbon paper in her interview. She stated in substance that Petitioner slipped and fell while they were running down the stairs leaving the precinct, that the stairwell had boxes stacked on top of each other and that the boxes containing roll call paper were damaged from the weight of the boxes, which caused the contents of the boxes to end up on the landing. Respondents argue that P.O. Anza did not state that Petitioner slipped on the carbon paper. Therefore, there was no credible evidence that Petitioner's injury was not the result of a service-related "accident," instead of "incident."

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 109 [1st Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1st Dept 2010]). When a court reviews an agency's determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1st Dept 1988]).

Furthermore, an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law, however an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation (*see Vink v New York State Div. of Hous. and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001]).

Here, the court denies the relief requested in Petitioner's Verified Petition and the court dismisses the Verified Petition. The court finds that upon remand and the additional investigation, Petitioner failed to demonstrate that Respondents' determination to deny Petitioner's line of duty ADR allowance was arbitrary, capricious, unreasonable or unlawful. The court agrees with Respondents and finds that their decision to deny Petitioner's application was rationally based and well within their discretion based on their view of the evidence. Respondents determined there were differing accounts of the accident and they were within their discretion to choose to credit the contemporaneous accounts, which did not mention the carbon paper, and other accounts years later which mentioned the carbon paper. Even though Petitioner's original line of duty report was lost, through no fault of her own, the control log entry containing a narrative of Petitioner's version of the events did not mention the carbon paper.

Therefore, the court finds that Petitioner failed to meet her burden of demonstrating that Respondents' decision was arbitrary and capricious, an abuse of discretion, made in violation of lawful procedure, or was affected by an error of law. The court determines that the decision to deny Petitioner's line of duty ADR allowance was rationally based on the evidence and that it was within Respondents' authority and discretion to deny Petitioner's application.

