

**Matter of Liranzo v New York City Employees'
Retirement Sys.**

2023 NY Slip Op 32029(U)

June 13, 2023

Supreme Court, Kings County

Docket Number: Index No. 524466/2022

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13th day of June, 2023.

PRESENT:

HON. CARL J. LANDICINO,

Justice.

-----X
In the Matter of the Application of
KELVIN LIRANZO,

Index No: 524466/2022

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law and Rules,

DECISION AND ORDER

- against -

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

Motion Sequence #1

Respondent.
-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers Numbered (NYSCEF)

Notice of Petition/Petition and	
Affidavits (Affirmations) Annexed.....	1-14, 16,
Answer (Affirmations).....	22-30,
Reply Affidavits (Affirmations)	32-33,
Memorandum of Law.....	31

After a review of the papers and oral argument, the Court finds as follows:

Petitioner, Kelvin Liranzo (hereinafter "Petitioner") seeks (motion sequence #1), *inter alia*, "review and annulment of the May 12, 2022 Final Determination denying Petitioner's application for "performance of duty" disability benefits under New York Retirement and Social Security Law ("RSSL") § 507-c; (2) directing the Board of Trustees to grant Petitioner his application retroactive to the date of his application on the ground that he is entitled to these benefits pursuant to RSSL § 507-c; (3) granting Petitioner's costs and disbursements, including reasonable attorneys' fees, and such other relief as the Court may deem just and proper; or, in the alternative, (4) remanding the

matter to the Board of Trustees to independently evaluate the evidence and review the Medical Board's recommendation to reject the benefits pursuant to RSSL § 507-c."

The Respondents the New York City Employees' Retirement System and Board of Trustees of the New York City Employees' Retirement System (hereinafter either "NYSCERS" or the "Respondents") oppose this application.

The Petitioner is a former employee of the New York City Department of Corrections ("DOC"). The Petitioner began his employment with the DOC on November 1, 2007. The Petitioner states that during the course of his employment, he would often engage in dangerous and physically demanding work involving maintaining the safety and security of inmates and other staff. The focus of the Petitioner's application relates to a physical altercation he was apparently involved in on September 29, 2016. The Petitioner represents that on that day he was required to restrain a violent inmate. During the incident, the inmate allegedly tackled the Petitioner, causing him to fall to the ground. After this incident, the Petitioner received medical attention and then returned to work. A few days after this incident he was evaluated by the Health Management Division of the DOC and that evaluation makes note of a left shoulder injury. The Petitioner alleges that he experienced ongoing pain after this incident but since he had significant financial obligations he did not take time off work or seek treatment for his injuries until March of 2018.

The Petitioner initiated a Workers' Compensation Board claim and a hearing was held on August 31, 2018. The Workers' Compensation Board issued a decision and found that the Petitioner had established a disability claim relating to his left shoulder.

The Petitioner thereafter applied for Disability Retirement Benefits pursuant to RSSL § 507-c (performance of duty disability benefits) and § 507- a (accidental disability benefits) on

August 16, 2019. As part of his application, the Petitioner explicitly referred to the September 29, 2016 incident and his ongoing pain in and limited use of his left shoulder.

The Medical Board of the Respondent reviewed the Petitioner's application. The Medical Board interviewed the Petitioner, requested and reviewed treatment records, including MRIs and other medical records, and issued a report on June 14, 2021. The Medical Board recommended that the Petitioner's application be denied, concluding that the Petitioner failed to show that his shoulder injury was causally related to the September 29, 2016 incident. The Petitioner appealed the recommendation, and the Board of Trustees adopted a resolution denying benefits on May 12, 2022. The Board of Trustees also found that the September 29, 2016 incident was not a competent cause of the shoulder injury. The Petitioner commenced this CPLR article 78 proceeding challenging the Board's determination.

The Respondents argue that the Board of Trustees' determination that the Petitioner was not entitled to Disability Retirement Benefits pursuant to RSSL § 507- c (performance of duty disability benefits) was correct and should not be vacated. The Respondents acknowledge that the Petitioner is disabled from performing his duties with the DOC. However, the Respondents contend that the Petitioner failed to meet the additional burden of establishing that his disabling condition was caused by the incident on September 29, 2016 while he was working. The Respondents argue that the Board of Trustees' decision to adopt the Medical Board's recommendation was rational, reasonable and supported by substantial evidence as the decision was the result of several interviews with the Petitioner and a review of his medical records. The Respondents contend that the Petitioner failed to establish the causal link between the September 29, 2016 incident and his injuries.

In the Seminal Holding of *Pell v. Board of Elections*, the Court directs that a determination is an abuse of discretion, arbitrary and capricious when it is manifestly unjust.

At this time, it may be ventured that a result is shocking to one's senses of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals...There is no doubt that the reason for the enactment of the statute (CPLR 7803) was to make it possible, where warranted, to ameliorate harsh impositions of sanctions by administrative agencies. That purpose should be fulfilled by the courts not only as a matter of legislative intention, but also in order to accomplish what a sense of justice would dictate.

-*Pell v. Board of Education*, 34 N.Y.2d 222 [1974].

Generally, "as long as the Board's determination is supported by a rational basis, and is neither arbitrary nor capricious, it will not be disturbed." *Nehorayoff v. Mills*, 95 N.Y.2d 671, 723 N.Y.S.2d 114 [2001] referring to *Pell*. Further, when Petitioner seeks same from this Court "...a Court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion." *Matter of Hello Albert, Inc. v. East Moriches Fire Dist.*, 129 AD3d 966, 13 N.Y.S.3d 113 [2d Dept 2015], quoting *Matter of Dreier v. Lavallo*, 29 AD3d 790, 815 N.Y.S.2d 661 [2d Dept 2006] quoting *Pell*.

"The Supreme Court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the determination or whether it is arbitrary and capricious." *Halloran v. NYC Employees' Ret. Sys.*, 172 AD3d 715, 716-17, 100 N.Y.S.3d 267 [2d Dept 2019]. "A court, in determining a CPLR article 78 petition, may not substitute its judgment for that of the agency responsible for making the determination" *Hilbertz v. City of New York*, 210 AD3d 1089, 1091, 179 N.Y.S.3d 696 [2d Dept 2022], quoting *Dobbins v. Unified Ct. Sys.*, 189 AD3d 1397, 1399, 138 N.Y.S.3d 561 [2d

Dept 2020]. “The Medical Board of the New York City Employees' Retirement System (hereinafter the Medical Board) determines whether a member applying for disability retirement is disabled (*see* Administrative Code of City of N.Y. § 13–167[b]).” *Drummond v. New*, 98 AD3d 1116, 1117, 951 N.Y.S.2d 214, 215 [2d Dept 2012].

The Court concludes that the determination made by the Respondents did not constitute an error of law and was not arbitrary, capricious or an abuse of discretion. The Respondents argue that the Petitioner failed to meet his burden regarding the causal relationship between the September 29, 2016 incident and the Petitioner’s disabling injuries. The Respondents also point to the lack of contemporaneous treatment. The Petitioner returned to work less than a week after the incident and did not seek treatment with Dr. Katzman until 2018. The Respondents also point to the fact that the medical records reviewed in the Petitioner’s underlying application suggest other causes for his disabling condition. An MRI submitted by the Petitioner dated May 15, 2013 showed “diffuse rotator cuff tendinosis.” Moreover, an MRI report dated August 18, 2018 found that the left shoulder contained surgical screws due to a medical procedure. The Petitioner does not explicitly allege that the placement of the surgical screws relates to the September 29, 2016 incident. *See Visconti v. Kelly*, 49 AD3d 273, 273–74, 852 N.Y.S.2d 117, 118 [1st Dept 2008].

The material relied on by the Medical Board supports its finding as to causation. Although others may have determined otherwise, the underlying determination is well reasoned and is not arbitrary or capricious. “Under this standard, as long as there was any credible evidence of lack of causation before the Board of Trustees, its determination must stand.” *Smith v. City of New York, Fire Dep't, Bd. of Trustees*, 208 A.D.3d 1335, 1337, 176 N.Y.S.3d 75 [2d Dept 2022] [internal quotation omitted]. The Court, should not entertain substitution of its judgment with that of the Medical Board or Trustees.

Although the Medical Board's findings as to causation differed from those of the petitioner's surgeon, who characterized the petitioner's arthrosis as "post-traumatic," the Medical Board explained that it disagreed with that characterization, since there was no basis for it in the petitioner's medical records. We see no reason to question this determination by the Medical Board, particularly in view of the principle that, "[w]here conflicting medical evidence and medical reports are presented to the Medical Board, it is solely within the province of the Medical Board to resolve such conflicts" (*Matter of Vastola v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 37 AD3d 478, 478 [2007]; see *Matter of Giuliano v New York Fire Dept. Pension Fund*, 185 AD3d at 815).

-*Kearney v. Nigro*, 209 AD3d 1024, 1027, 177 N.Y.S.3d 339 [2d Dept 2022].

Accordingly, the Petitioner has failed to show that the determinations of the Respondents constituted an error of law or was arbitrary, capricious or an abuse of discretion. "Since there was some credible evidence to support the Medical Board's conclusion that petitioner's disability was not caused by a service-related accident, the Board of Trustees was entitled to rely on the Medical Board's recommendation as to causation, and its determination denying petitioner ADR benefits may not be disturbed." *Paccio v. Kelly*, 97 AD3d 415, 415, 947 N.Y.S.2d 514, 515 [1st Dept 2012]. The Petition is therefore denied.

Based on the foregoing, it is hereby ORDERED as follows:

The Petitioner's application (Motion Sequence #1) is denied and the Petition is dismissed.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.