

Mungiguerra v Nigro

2023 NY Slip Op 32643(U)

July 31, 2023

Supreme Court, New York County

Docket Number: Index No. 150692/2022

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART 63M

Justice

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ROBERT E. MUNGIGUERRA,

Petitioner,

- v -

DANIEL A NIGRO, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY FIRE DEPARTMENT, ARTICLE I-B
PENSION FUND, JAMES LYNCH, VENKATESHA REDDY,
ALAN DAVID, PETER NEUMANN, DAMIAN MARTINO,
LAWRENCE SCHERER

Respondents.

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INDEX NO. 150692/2022
MOTION DATE 06/26/2023
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

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

Upon the foregoing documents, Petitioner’s Petition for a judgment pursuant to Article 78 of the CPLR: A) reviewing and annulling the action of the respondents herein in denying to petitioner an accident disability retirement pursuant to the City of New York Administrative Code § 13-353 declaring said action to be arbitrary, capricious, unreasonable, and unlawful. B) directing and ordering the respondents to grant petitioner's application for accident disability retirement pursuant to the City of New York Administrative Code § 13- 353, retroactive to his date of retirement; or, in the alternative, C) directing and ordering a trial pursuant to §7804(h), CPLR, to produce the doctors from the Medical Board to support their conclusory denial of petitioner's application for accident disability retirement; or, in the alternative, D) directing and ordering the respondents by way of remand to have petitioner's case reviewed by a fresh, newly comprised Medical Board, which includes an orthopedic surgeon; and for an Order pursuant to §2307 (a) of the CPLR directing the respondents herein to serve and file upon the date hereof: A) all reports,

recommendations, certificates, and all other documents submitted to the Board of Trustees, in connection with the petitioner's accident disability retirement applications herein. B) copies of the minutes of the meetings of the Board of Trustees wherein the Board of Trustees considered, discussed, or acted upon the petitioner's accident disability retirement application. C) copies of all records, reports or notes relating to petitioner which are on file with the Fire Pension Fund and the FDNY Bureau of Health Services. D) a copy of petitioner's FDNY Sick History Report and Duty Status Report. E) a copy of the most recent written manual containing the FDNY's Medical Screening Manual for Fire Fighters setting forth the standards for determining whether an individual satisfies the medical standards to be a New York City Fire fighter. And F) a copy of the Article 1-B Fire Pension Fund Rules governing the disability retirement procedure, is decided as follows:

Petitioner Robert E. Mungiguerra ("Lt. Mungiguerra") served in the New York City Fire Department ("FDNY") from 1979 until his retirement in 2021. At all times throughout his 41 years of service he was a member the FDNY Article I-B Pension Fund ("FPF"). Lt. Mungiguerra was working in full firefighter capacity, without medical impairment, until he suffered a series of line-of-duty injuries to his left knee, left hip, and lower back on March 7, April 5, and July 27, 2020. Petitioner timely filed internal Member Injury Reports and the FDNY Bureau of Health Services ("BHS") Medical Board found him disabled due to his injuries and placed him on 'light duty' after his April 5, 2020, accident. The Medical Board assessed him and noted the job-essential tasks that Lt. Mungiguerra was no longer able to do as a result of his injuries, "He notes he cannot overhaul, put on his mask and gear, put up a ladder or force a door... he cannot kneel, squat, duck walk, climb a ladder or climb a staircase with gear..." This assessment aligns with those of his treating physicians, who also noted that Lt. Mungiguerra was no longer fit for full

duty as a result of his injuries and prescribed multiple treatments including physical therapy, medication, meniscectomies, arthroscopy, and chondroplasty – seemingly to no avail.

The FPF Medical Board (“Medical Board”) is comprised of alternating panels of three physicians appointed by The Board of Trustees of the FDNY, The Commissioner of Health and Hospitals Corporation, and the Commissioner of Citywide Administrative Services. The Medical Board exists to evaluate members’ disability applications and report their recommendations to the Board of Trustees.

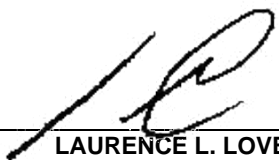
Lt. Mungiguerra timely filed an application for accident disability retirement (“ADR”) through the proper channels. On April 28, 2021, the Medical Board reviewed his knee and shoulder disability application and recommended that his ADR application be denied and that he be granted an Ordinary Disability Retirement (“ODR”). The Medical Board found Petitioner’s left shoulder and knee conditions to be disabling, but solely attributed this to age-related pathology. On April 30, 2021, the Medical Board reviewed his lower back disability application and recommended that his ADR application be denied and that he be granted ODR. Neither of these medical boards explained the factual basis for their conclusions.

The Medical Board’s causal findings must be based on ‘credible evidence.’ This is defined as “evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered” and that is “not merely a conclusion of law, nor mere conjecture or unsupported suspicion,” and that the Medical Board is required to “articulate” the basis for their etiological conclusions. *See, Matter of Meyer v. Board of Trustees*, 90 N.Y.2d 139 at 147 (Court of Appeals, 1997). Additionally, while the Medical Board is not required to accept the opinions of FDNY’s BHS Committee or Petitioner’s Doctors, they still were obligated to explain why they didn’t. The Medical Board did not sufficiently articulate their reasoning when

they issued their decision, it was merely conclusory and did not address the opinions of Petitioner’s treating physicians. *See also, Matter of Lamar v Nigro, et. al., 2022 NY Slip Op 32197(U).*

Lt. Mungiguerra was able to perform his full duties as a firefighter up until his March and April 2020 injuries. While he was able to continue until his July 2020 injury, the delayed response to the initial accidents does not mean that those injuries are insignificant. *See, Matters of Salvia v Bratton, 159 A.D.3d 583 (1st Dept., 2018) and Matter of Boder v O’Neill, 170 A.D.3d 528 (1st Dept., 2019).*

ORDERED that petition is granted to the extent that Petitioner is entitled to accident disability retirement benefits retroactive to the date of his retirement.

7/31/2023 DATE					 LAURENCE L. LOVE, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER			
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT		<input type="checkbox"/>	REFERENCE