

Deloren v Sewell

2023 NY Slip Op 33474(U)

October 4, 2023

Supreme Court, New York County

Docket Number: Index No. 158282/2022

Judge: Denise M. Dominguez

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENISE M DOMINGUEZ PART 21

Justice

-----X INDEX NO. 158282/2022

ELLIS DELOREN, MOTION SEQ. NO. 001

Petitioner

- v -

KEECHANT L. SEWELL, AS POLICE COMMISSIONER OF THE CITY OF NEW YORK, ARTICLE II THE BOARD OF TRUSTEES OF THE POLICE PENSION FUND, ARTICLE II, NEW YORK CITY POLICE DEPARTMENT AND THE CITY OF NEW YORK

DECISION AND ORDER ON MOTION

Respondents

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

For the reasons that follow, this Petition is denied.

Petitioner, Ellis Deloran, a 20-year member of the New York City Police Department (NYPD) commenced this special proceeding pursuant to CPLR 7803- Article 78. Petitioner after suffering strokes, applied for Accidental Disability Retirement (ADR) as he was unable to perform full police duties. By final decision on May 27, 2022, Respondent, the Board of Trustees of the Police Pension Fund (Board of Trustees) on behalf of all Respondents, denied Petitioner's application. The Board of Trustees found that Plaintiff was not eligible for the life-time pension under ADR. Petitioner now seeks to vacate, nullify, or set aside the determination alleging that the Board of Trustees erred on the law, and that the determination was arbitrary, capricious and an abuse of discretion.

It is well-settled that judicial review of Article 78 special proceedings, is limited to whether the administrative agency's determination was arbitrary and capricious, or irrational and unreasonable (*see Pell v. Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cnty.*, 34 NY2d 222 [1974]; *Gilman v N.Y. State Div. of Hous. & Community Renewal*, 99 NY2d 144 [2002]; *Gaines v. New York State Div. of Hous. & Cmty. Renewal*, 90 NY2d 545 [1997]). Court may not re-examine the facts presented, or consider new evidence (*Heintz v. Brown*, 80 NY2d 998 [1992]). Rather, the judicial review is limited to assessing only whether there is a rational basis for the administrative determination without disturbing underlying factual determinations (*Heintz*, 80 NY2d 998[1992]; see also *Borenstein v. New York City Employees' Ret. Sys.*, 88 NY2d 756 [1996]).

When a police officer applies for ADR pension due to a heart condition or a stroke, New York General Municipal Law §207-k enacted to recognize the inherit stress of the work, does not place the burden on the officer to show incapacity and its causation (*see General Municipal Law § 207-k; Uniformed Firefighters Ass'n, Loc. 94, IAFF, AFL-CIO v. Beekman*, 52 NY2d 463 [1981]; *cf. Evans v. City of New York*, 145 AD2d 361 [1st Dept 1988]; *Doorley v. Kelly*, 106 AD3d 554 [1st Dept 2013]). However, when there is evidence showing that the heart condition or stroke was not service or stress related, or was congenital in nature, ADR benefits may be denied (*see Goldman v. McGuire*, 101 AD2d 768 [1st Dept 1984], *aff'd*, 64 NY2d 1041 [1985]). For example, denial of ADR benefits have been upheld when there is medical evidence showing that the cause of a petitioner's stroke was unknown, and that there was no medical history of coronary artery disease or hypertension (*Titza v. Kelly*, 138 AD3d 498 [1st Dept 2016]; *see also Vallas v. Safir*, 304 AD.2d 353 [1st Dept 2003]; *Hogg v. Kelly*, 93 AD3d 507 [1st Dept 2012]).

Here, on December 13, 2019, the Medical Board first considered Petitioner's ADR application. The Medical Board upon reviewing multiple records, including, reports from an NYPD neurologist who examined Petitioner on several occasions after the strokes, hospitalization records from NYU Langone regarding Petitioner' s multiple visits to the emergency room recommended approval.

On April 8, 2020, the Board of Trustees before approving the recommendation, sent the application back to the Medical Board to address issues of causation based on evidence of Petitioner's congenital defect and no stress-related history.

The Medical Board then reviewed the application and documents again. On June 5, 2020, the Medical Board issued its second report finding that it could not affirm its prior recommendation for ADR benefits since there was "no evidence of hypertension or heart disease." Subsequently, on September 9, 2020, the Board of Trustees requested that the Medical Board review its report again and expand and clarify regarding Petitioner's hemorrhagic and ischemic strokes.

On November 6, 2020, the Medical Board prepared its third report and found that Petitioner's ADR application should be denied. The Board of Trustees then discussed Petitioner's application on April 14, 2021, May 7, 2021, and June 9, 2021. The Board of Trustees again voted to send the application to the Medical Board for further clarification.

On November 12, 2021, the Medical Board submitted its 4th report. The Medical Board reviewed new medical records and conducted a phone interview with the Petitioner. The Medical Board concluded that the Petitioner was permanently disabled and therefore unable to perform the full duties and reaffirmed its prior decision denying ADR benefits and finding as the final diagnosis to be the cause of the strokes "cerebrovascular accident, basilar artery stenosis most likely congenital in origin" The Board of Trustees now with 4 reports met and voted on April 13, 2022

to affirm the findings of the Medical Board. By letter dated May 27, 2022, the Board of Trustees formally denied Petitioner's ADR application.

Upon review, this Court finds that Respondents' decision was not arbitrary and capricious, nor was it an abuse of power. Rather, this Court finds that Respondents gave due and extensive consideration based on substantial evidence in reaching its rationally based and difficult determination (see *Meyer v. Bd. of Trustees of the New York City Fire Dep't, Article 1-B Pension Fund by Safir*, 90 NY2d 139 [1997]). Accordingly, it is hereby,

ORDERED that the Petition is denied, and the matter is dismissed.

10/4/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

HON. DENISE M. DOMINGUEZ

J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE