

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

2023 NY Slip Op 33685(U)

October 11, 2023

Supreme Court, Kings County

Docket Number: Index No. 514587/2022

Judge: Devin P. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**Supreme Court of the State of New York
County of Kings**

Index Number 514587/2022
Seq. 001

Part 91

DECISION/ORDER

In the Matter of the Application of

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

GEORGE L. CASTELLANOS,

Papers Numbered

| | |
|---|----------|
| Notice of Motion and Affidavits Annexed | <u>1</u> |
| Order to Show Cause and Affidavits Annexed. | <u>2</u> |
| Answering Affidavits | _____ |
| Replying Affidavits | <u>3</u> |
| Exhibits | _____ |
| Other | _____ |

Petitioner,

against

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM,
MEDICAL BOARD OF THE NEW YORK CITY
EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

Upon review of the foregoing papers,¹ petitioner's application, pursuant to Article 78 of the CPLR, to reverse a determination by respondent New York City Employees' Retirement System Board ("NYCERS") is decided as follows:

Factual Background

Plaintiff is an employee of the New York City Human Resources Administration (HRA) with the job title Executive Director, Bureau of Construction and Building Maintenance. The plaintiff first sought disability retirement from the agency on September 14, 2015, and, after an initial denial, renewed that application on July 10, 2017.

In response to his initial application, petitioner appeared before the Medical Board for interviews and physical examinations on January 28, 2016. The Medical Board states in its

¹ Reply papers are limited by the Unified Rules to 4,200 words (Rule 202.8-b). Petitioner's affirmation in reply is 31 pages, which is an estimated 7,500 words. Counsel is strongly encouraged to abide by the word limit or risk the rejection of future submissions to the court.

report from that session that it required additional information. The Medical Board saw petitioner again on July 21, 2016, where it found that the “documentary and clinical evidence fail[ed] to substantiate that [petitioner] is disabled from performing [his work duties].” The Medical Board saw petitioner a third time on March 2, 2017, for consideration of additional documentation. Respondent ratified the Medical Board’s determination on May 12, 2017. Petitioner renewed his application for disability retirement benefits on July 10, 2017. The Medical Board saw petitioner for a fourth interview and physical examination on December 5, 2017. The Medical Board then issued its December 5, 2017 (2017 Report), determination which concluded that the petitioner was not disabled from performing his work duties. Respondent upheld that Medical Board’s conclusion on February 8, 2018.

Petitioner’s applications state that he continued to work until September 15, 2015, the day after he first applied for benefits, and the day before he had right hip replacement surgery. The petitioner’s last day of work was September 14, 2015.

After oral argument, this court issued a decision granting the petitioner’s first Article 78 application to vacate the respondent’s determination and the Medical Board’s determination. Thereafter, the Medical Board issued a new report broken into two sections, dated April 28, 2020 and June 2, 2020 which maintained that the petitioner is not disabled from performing his job responsibilities (2020 Report at 11). On January 14, 2022, NYCERS notified petitioner that the NYC Board of Trustees had accepted the 2020 Report and denied petitioner’s retirement application. The petitioner then commenced the instant Article 78 petition.

The 2020 Report Board takes the position that the decretal paragraph in the 2019 order did not require the Medical Board, or the respondent, to conduct new examinations or obtain new records, but rather merely required a clearer explanation of the Board’s determination (2020

Report at 2). Accordingly, the 2020 Report includes extended descriptions of the fifteen imaging reports the Board relied on when issuing its 2017 Report (*id.* at 8–10). The 2020 report also includes standard degrees of flexibility against which petitioner’s measurements can be compared (2020 Report at 12, ¶¶ 1, 3), and maintains its previous conclusion that petitioner’s perceived disability is a result of “symptom magnification” based on observations of petitioner during periods when he was not being tested (2020 Report at 11, ¶ 4; 12).

Analysis

Pursuant to CPLR 7803 (3), the question raised in an Article 78 proceeding is “whether a determination was made in violation of lawful procedures, affected by an error of law or was arbitrary and capricious.” The function of the court is to determine whether the action of an administrative agency had a rational basis (*Pell v Bd. of Educ. of Union School Dist. No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 230-31 [1974]).

Pursuant to Retirement & Social Security Laws § 605 (b) (3), in order to receive disability retirement, a member of NYCERS who has less than ten years of total service must be “physically or mentally incapacitated for performance of gainful employment as the natural and proximate result of an accident not caused by his own willful negligence sustained in the performance of his duties in active service while actually a member of the retirement system.” The petitioner has the burden of proving causality between the incident and the disabling injury (*see McMurrrough v Bd. of Trustees of the New York City Fire Dept.*, 227 AD2d 626 [2d Dept 1996]).

The award of accidental disability retirement benefits to a NYCERS applicant is a two-step process.

After conducting its own medical examination of the applicant and considering the evidence submitted in support of the claim, the Medical Board, as a threshold matter,

must [first] certify whether the applicant is actually ‘physically or mentally incapacitated for the performance of city-service.’ If the Medical Board concludes that the applicant is disabled, it must then make a recommendation to the Board of Trustees as to whether the disability was ‘a natural and proximate result of an accidental injury received in such city-service. The second step involves the NYCERS Board of Trustees. [Second], if the Medical Board certifies that the applicant is not medically disabled for duty, the Board of Trustees must accept that determination and deny applicant’s claim.

(*Bornstein v New York City Employees’ Retirement Sys.*, 88 NY2d 756, 760 [1996]).

Ordinarily, the Medical Board’s disability determination will not be disturbed if the determination is based on substantial evidence. While the quantum of evidence that meets the “substantial” threshold cannot be reduced to a formula, in disability cases the phrase has been construed to require “some credible evidence” (*id.*). “Credible evidence is evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered” (*Meyer v Bd. of Trustees of New York City Police Dept.*, 90 NY2d 139, 147 [1997]).

As an initial matter, the prior order, dated August 19, 2019, was served with a notice of entry on November 5, 2021. That order found the Medical Board’s determination that the March 4, 2014 fall at the HRA facility was not an accident unreasonable. Respondent acknowledges this holding in its answer to the instant petition (Answer at ¶ 63). The time to appeal that order expired on December 6, 2021. There is no evidence provided that the Medical Board appealed this determination—it is, therefore, the law of the case. The Medical Board’s attempt to reassert this position in its 2020 Report (2020 Report at 10) is unavailing.

In its purported attempt to satisfy the determination of the prior order, the Medical Board did not conduct any new interviews, instead reviewing the prior records and attempting to provide additional explanation. The prior decision stated: “The Medical Board’s minimal descriptions of the physician and imaging reports, which apparently played a decisive role in its conclusions, were insufficient to allow this court to evaluate these conclusions (*Guillo v New*

York City Employees' Retirement Sys., 39 Misc 3d 1208[A], 2013 NY Slip Op 50539[U], *4-5 [Sup Ct, Kings County 2013]).” The Medical Board has interpreted this statement to mean that it merely needed to provide a more robust description of the imaging reports and range of motion evaluations in order to satisfy its burden.

The prior order was intentionally not designed to give the Medical Board instructions as to how it should investigate petitioner’s claims. To do so would have reached beyond the purview of the court’s review of an agency determination (*see Campbell v Bd. of Trustees of New York City Fire Dept., Art. 1-B Pension Fund*, 47 AD3d 926, 928 [2d Dept 2008]). Rather, the court was assessing whether the Medical Board’s determination was “supported by some credible evidence and [was] not irrational” (*id.* at 927).

The court’s review is the same on the instant petition. In determining whether the Medical Board’s determination was rational, the logical consistency of the Board’s position must be assessed. Here, there are numerous inconsistencies in the Medical Board’s report. Respondent argues both that the petitioner engaged in symptom magnification to avoid working (2020 Report at 11, ¶ 4) while also alleging that the plaintiff continued to work for a year and half after his accident until undergoing a second hip replacement surgery (2020 Report at 11, ¶ 3), which, they contend, somehow demonstrates that the plaintiff was not disabled. However, the Medical Board’s conclusion does not logically follow. The fact that the petitioner continued to work until needing to undergo surgery is not evidence that, upon seeking disability retirement, the plaintiff engaged in symptom magnification. Rather, these facts could just as easily be evidence that the petitioner was attempting to do his work to the best of his ability until he could no longer do so, at which point he filed for disability retirement.

Additionally, the Medical Board seems to both argue that the petitioner is not disabled from doing his job because his job does not require fieldwork (2020 Report at 10, ll. 20–28), and yet also contends (despite this court’s prior determination) that the petitioner slipping on a wet floor while climbing in from a snow-covered roof was not an accident because it was the kind of condition an inspector should be aware of and expect to face in the course of his responsibilities (2020 Report at 10, ll. 30–40). The petitioner’s job description reads:

[overseeing] as deputy to the director of a large city-wide bureau providing building rehabilitation, repair and maintenance services to city-owned or supervised buildings or emergency repairs to privately owned buildings . . . direct a city-wide contract monitoring and inspection program . . . serves as a director of operations of a maintenance and technical support office providing a broad range of maintenance repair, rehabilitation and technical support services for a very large number of city-owned buildings.

This job description requires fieldwork on its face. The respondent may have concluded that the respondent is not disabled from performing a sedentary job, but the job he currently has is not a sedentary one. The logical inconsistency of respondent’s position indicates that the agency determination is irrational and it is therefore vacated.


Conclusion

For the reasons stated above, petitioner’s Article 78 petition is granted to the extent that Board of Trustee’s determination, together with the Medical Board’s determination itself, is vacated. The record demonstrates that Mr. Castellanos is disabled from the job to which he was last assigned as the respondent itself has characterized that job. The matter is therefore remanded to the Board for further decision consistent with this order.

This constitutes the decision and order of the court.

October 11, 2023

DATE



DEVIN P. COHEN
Justice of the Supreme Court