

**Matter of Ling Lin v Sewell**

2023 NY Slip Op 34210(U)

December 5, 2023

Supreme Court, New York County

Docket Number: Index No. 150676/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS**

**PART 10M**

*Justice*

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In the Matter of the Application of

LING LIN,

Petitioner,

- v -

KEECHANT SEWELL, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees, ex officio, of the Police Pension Fund, Article II, THE BOARD OF TRUSTEES of the Police Pension Fund, Article II, NEW YORK CITY POLICE DEPARTMENT and THE CITY OF NEW YORK,

Respondents.

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**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 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, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

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

Upon the foregoing documents, the court denies Petitioner Ling Lin’s (“Petitioner”) Verified Petition and the court dismisses it as against Defendants Keechant Sewell, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees, ex officio, of the Police Pension Fund, Article II (“Commissioner Sewell”), The Board of Trustees of the Police Pension Fund, Article II (“Board of Trustees”), New York City Police Department (“NYPD”) and The City of New York (“the City”) (collectively, “Respondents”), without costs to any party.

Petitioner brought this Article 78 Petition against Respondents seeking a judgment reviewing and annulling Respondents’ denial of Petitioner’s Accident Disability Retirement (“ADR”) pension, pursuant to New York City Administrative Code § 13-252, and approval of

the lesser Ordinary Disability Retirement (“ODR”) benefits, pursuant to New York City Administrative Code § 13-251, and ordering Respondents to award Petitioner ADR benefits. Petitioner argues in substance that Respondents’ denial of his application for ADR and approval of ODR was arbitrary, capricious, unreasonable and unlawful.

Petitioner alleges in substance that he was employed as a Police Officer with NYPD beginning on January 23, 2007, when he was 28 years old and had no history of back problems. Petitioner was a member of the Police Pension Fund. Petitioner alleges in substance that he suffered six line of duty injuries which caused injuries to his back: 1) June 13, 2009, motor vehicle accident; 2) September 16, 2010, motor vehicle accident; 3) September 18, 2011, lifting heavy van bench seat; 4) September 14, 2012, attempted arrest; 5) July 12, 2015, motor vehicle accident after feeling severe back pain; and 6) October 25, 2015, attempted arrest. Petitioner was treated for these injuries over the years, including having a discectomy on May 15, 2014, extensive physical therapy and he took prescription pain killers.

Petitioner filed for ADR on February 20, 2015 and March 29, 2019. The Board of Trustees remanded Petitioner’s applications on multiple occasions. The Medical Board recommended the denial of Petitioner’s ADR applications and the Commissioner’s automatic ODR applications on May 19, 2015, March 1, 2016 and October 11, 2016. The Board of Trustees denied Petitioner’s ADR and ODR benefits on January 11, 2017.

Petitioner was placed on restricted duty without a firearm and he was never restored to full duty. In March 2017 Petitioner was sent by NYPD to an inpatient care facility for treatment and counselling for addiction to narcotic prescription pain medications.

Petitioner filed a previous Article 78 Petition, dated May 2, 2017, challenging the denial of his ADR application. While the proceeding was pending, on March 29, 2019, Petitioner re-

applied for ADR and alleged that he suffered from chronic back pain caused by his multiple line of duty injuries and his back surgery. He also discussed his treatment for narcotics addiction and disclosed that his pain and situation has caused him to suffer from depression. The Medical Board focused on Petitioner's psychological condition and deferred its decision for further psychological testing.

In the meantime, on December 30, 2019, the court found the denial of Petitioner's ADR application to be arbitrary and capricious and remanded it for new medical findings and reports by the Medical Board and a new determination by the Board of Trustees consistent with the court's order.

On March 3, 2020, the Medical Board again recommended denial of both of Petitioner's ADR and ODR applications and the Medical Board found that Petitioner did not have a psychiatric disability. However, after the court's remand, the Medical Board reconsidered the applications and on July 7, 2020, the Medical Board again recommended disapproval of both applications. Petitioner requested that the Board reconsidered his applications and he provided additional records and continued his treatment.

On April 19, 2022, the Medical Board recommended denial of Petitioner's ADR application, but approval of his ODR application. The Board found Petitioner to be disabled by degenerative disc disease of his lumbar spine, which was not caused by his line of duty injuries. However, the Board found that traumatic injuries are a medically accepted cause and/or contributing factor of degenerative disc disease. The Board found that Petitioner lacked effort in his range of motion and manual muscle tests during his physical examination. On October 12, 2022, the Board of Trustees had a tie vote, which resulted in the denial of Petitioner's ADR application and approval of his ODR application.

Petitioner argues in substance that the determination to deny his ADR benefits and grant him only ODR benefits was arbitrary, capricious, unreasonable, unlawful and contrary to the law. He further argues that the determination was contrary to the competent evidence and that it ignored the proper standards and material evidence. Petitioner argues that he was 5'6" tall, 125 pounds and maintained his slim build throughout his career. Besides his back condition, he was in good physical health. Therefore, Petitioner argues that the evidence supports that his condition was caused by his line of duty injuries and that he should have been approved for ADR benefits.

Respondents oppose Petitioner's application and argue in substance that Petitioner failed to meet his burden of establishing that the determination denying his ADR benefits and approving his ODR benefits was arbitrary and capricious. Respondent further argues in substance that the Board of Trustees' determination was not arbitrary and capricious, but that it was reasonable, lawful and proper. Additionally, Respondent argues that the determination was consistent with the credible medical evidence which supported the Medical Board's findings that the alleged disability was not caused by Petitioner's line of duty incidents. Therefore, the Board of Trustees was justified in relying on the Medical Board's recommendation regarding causation and the court should not substitute its judgment on the medical issues for that of the administrative body designated by statute to resolve medical controversies.

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 [1<sup>st</sup> 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 [1<sup>st</sup> 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 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2001]).

To receive ADR, Petitioner must demonstrate that he should be retired because he became disabled and is physically or mentally incapacitated for the performance of his police officer duties and that such disability is a natural and proximate result of an accidental injury received during his service as a police officer (New York City Admin. Code § 13-252; *Borenstein v New York City Employees' Ret. Sys.*, 88 NY2d 756, 760-761 [1996]). The Medical Board is responsible for determining whether the applicant is physically or mentally disabled and unable to perform his or her city-service (*id.*). The Medical Board's determination is binding on the Board of Trustees, so the Medical Board's determination is final (*id.* at 761). However, even if the Medical Board makes a recommendation as to causation, the Board of Trustees has the

ultimate authority to determine whether the disability was caused by a line of duty accidental injury (*Meyer v Bd. of Trs. of the N.Y. City Fire Dep't*, 90 NY2d 139, 145-146 [1997]). The Board of Trustees' determination as to causation must be upheld if the factual findings are supported by substantial evidence, or its final determination is rational and reasonable, unless the Board of Trustees has a six to six tie vote (*Canfora v Board of Trustees*, 60 NY2d 347, 351-352 (1983)). If there is a tie vote, then the court may not set aside the Board of Trustees' denial of ADR, unless the court determines as a matter of law based on the record with credible medical evidence that the disability was the natural and proximate result of a service related accident (*Meyer*, 90 NY2d at 145-156).

Based on the credible evidence in the record and the applicable law, the court finds that Petitioner failed to meet his burden of demonstrating that the denial of his ADR application, the approval of his ODR application and the Medical Board's and Board of Trustees' determinations that Petitioner's condition was not caused by his line of duty injuries was arbitrary and capricious or contrary to the evidence and lawful authority.

The court cannot impose its own judgment and reverse the determination in this matter. The Board of Trustees was entitled to rely on the Medical Board's determination and view of the evidence. The Medical Board reviewed Petitioner's extensive medical records covering almost ten years, and evaluated his physical and mental conditions on numerous occasions over the years from 2015 to 2022. It determined that Petitioner suffered from degenerative disc disease since as early as 2011, and that there had been no significant change after his line of duty incident on October 25, 2015, although an MRI revealed that it had increased in July 2015, but that it had not changed after his last incident. Although it was disputed, it found no evidence of lumbar radiculopathy.

The court finds that the Board was well within its discretion to make such determination as it relied on Petitioner’s medical records and his physical and psychiatric examinations and tests to make such decision. It is of no moment that other reasonable doctors would disagree with such findings because the Medical Board and Board of Trustees are tasked with the responsibility of resolving such disputes. Additionally, the Medical Board did not disregard competent evidence, it just disagreed with Petitioner’s view of the findings.

Therefore, the court denies Petitioner’s Verified Petition and dismisses it.


The court has considered any additional argument raised by the parties which was not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioner Ling Lin’s Verified Petition and the court dismisses it as against Defendants Keechant Sewell, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees, ex officio, of the Police Pension Fund, Article II, The Board of Trustees of the Police Pension Fund, Article II, New York City Police Department and The City of New York; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of the Respondents as against the Petitioner, without costs to any party.

This constitutes the decision and order of the court.

  
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<u>12/5/2023</u>		<u>ERIKA M. EDWARDS, J.S.C.</u>	
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<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