

Shaffee v Caban

2025 NY Slip Op 32443(U)

July 9, 2025

Supreme Court, New York County

Docket Number: Index No. 151344/2024

Judge: Nicholas W. Moyne

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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SHOBHA SHAFTEE,

Petitioner,

- v -

EDWARD A CABAN, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY POLICE PENSION FUND, ARTICLE II

Respondent.

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INDEX NO. 151344/2024

MOTION DATE 02/12/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 38, 39

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

Upon the foregoing documents, it is

Petitioner, Shobha Shaffee, a former police officer employed by the New York City Police Department (“NYPD”), commenced this Article 78 special proceeding against the respondents, Edward A. Caban, as the Police Commissioner of the City of New York and as Chairman of the Board of Trustees of the Police Pension Fund, Article II, and The Board of Trustees of the New York City Police Pension Fund, Article II, seeking judicial review of the Board of Trustees’ final determination to deny her application for accidental disability retirement (ADR) benefits, made under Administrative Code of the City of New York § 13-252. Shaffee, argues that this denial was arbitrary, capricious, unreasonable and unlawful and seeks an order: (1) annulling this determination; (2) directing that respondents retire her with ADR benefits, retroactive to her ordinary disability retirement (ODR) date; or, in the alternative, (3) remanding this matter back to the Board of Trustees for investigation and further consideration.

In their answer and opposition to the petition, respondents assert that the final decision by the Board and denial of the petitioner’s application was not arbitrary and capricious, and there was no nondiscretionary legal obligation for the Board to award ADR benefits in this case. Upon a review of the submissions provided in the record and having heard oral argument, the Court agrees with respondents that the petition should be denied, and the proceeding dismissed.

The relevant facts, as contained in the administrative record, are as follows. Petitioner is a former uniformed police officer, first appointed with the NYPD on January 8, 2014, and served until she was retired for ODR on October 11, 2023. Amidst the

COVID-19 pandemic, while many private and public sector offices were closed or limited operations, NYPD police officers were required to continue reporting to their regular work assignments. This was due to their status as first responders and the State of New York's consideration of the NYPD as an essential service. During the pandemic and immediately prior to her retirement, Shaffee was serving as an NYPD officer.

It was in this time-period that petitioner alleges she was exposed to the COVID-19 virus from another Officer in her precinct, which led to her first testing positive for the virus on August 24, 2021. In the approved Line-of-Duty Incident Report regarding her infection, dated August 24, 2021, the "Injured Uniformed Member's Statement" petitioner notes that after experiencing symptoms including fever, body aches, cough, and shortness of breath, she was tested, received a positive diagnosis, and "immediately went sick same day" (NYSCEF Doc. No. 3). Further, the Report and Statement include that petitioner was in close proximity to members of the public and members of the command who later tested positive for the virus, petitioner was not aware of any family members who contracted the virus prior to her, and she "practiced strict social distancing and frequently conducted personal decontamination during her off duty time" (*id.*). Additionally, the "Investigating Supervisor's Statement", dated September 28, 2021, included that the above-statement (*i.e.* petitioner was unaware of contagious family members and utilized decontamination efforts during her time off-duty) should be noted and, "therefore the contraction of the virus must have occurred during her official duties while acting in her capacity as a police officer in the NYPD" (NYSCEF Doc. No. 3 at 7).

Additionally, in both October 2021 and February 2022, there were "Certification of Line of Duty Injury/Authorization for Treatment" issued for petitioner, authorizing services for follow up visits and listing the diagnoses of "Covid Pneumonia" and/or "s/p COVID" (NYSCEF Doc. No. 4). On November 16, 2021, a Recommendation for Survey was issued to the Supervising Chief Surgeon regarding the petitioner, stating she had been on sick report/restricted duty since August 24, 2021, with the complaint/diagnosis of "s/p COVID – rx'd THC for Pain Mgnt" (NYSCEF Doc. No. 5). Since the date of August 24, 2021, petitioner had not returned to full duty, remaining on LOD Sick Report and/or then restricted duty since the date of April 7, 2021.

An application for ADR retirement is a two-step process, with the first step involving the Medical Board conducting a medical examination of the applicant and reviewing the evidence submitted (*Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d 756, 760 [1996]). As a threshold matter, the Medical Board must investigate all essential statements and certifications by or on behalf of a member in connection with an application for disability retirement and report its conclusions and recommendations to the Board of Trustees thereon (*see* Administrative Code of City of NY §§ 13-223, 13-252).

On or around July 5, 2022, the NYPD Chief Surgeon and/or Police Commissioner filed a retirement application for petitioner recommending she be examined by the Article II Disability Medical Board for both ADR and ODR benefits

(NYSCEF Doc. No. 6). On September 30, 2022, following their review of the petitioner's medical history, the evidentiary submissions, and an interview with/examination of the petitioner, the Police Pension Fund (PPF) Medical Board issued their determination to the PPF Board of Trustees on the issue of whether petitioner was medically capable of performing police duties (NYSCEF Doc. No. 8). Among other topics, the Medical Board discussed the following in their determination: the petitioner's hospitalization(s) for COVID-19 related symptoms; the petitioner's test results and/or the reports from her doctor(s) indicating respiratory issues and dependency on portable oxygen; and that the petitioner experiences various physical symptoms/conditions associated or attributed with her "post-acute COVID-19" that limit her physical ability (*id.*). Based on their review of the above, the PPF Medical Board found petitioner "medically unfit for to perform the full duties of a New York City Police Officer" and the final diagnosis was "Post COVID Infection Respiratory Failure" (*id.*). Accordingly, the Medical Board recommended approval of the ADR application and disapproval of the ODR application and opined that the competent causal factor was the line of duty injury of August 24, 2021 (*id.*).

Although the Trustees are bound by the Medical Board's determination as to whether the applicant is disabled, they are not bound by the Medical Board's recommendation on the issue of causation and must make its own determination as to whether the disability was a natural and proximate result of an accidental injury received in such city-service (*see Picciurro v Bd. of Trustees of New York City Police Pension Fund*, 46 AD3d 346, 348 [1st Dept 2007]; *Canfora v Bd. of Trs.*, 60 NY2d 347, 351 [1983]). Therefore, after the first step has been completed, the PPF Board of Trustees, comprised of representatives of city government and police labor unions, must then review the application, including the Medical Board's recommendation as to causation, and vote whether to grant or deny benefits (*see* Administrative Code §§ 13-223, 13-216; *Stavropoulous v Bratton*, 148 AD3d 449, 450 [1st Dept 2018]). For the Trustees to pass a resolution, including a motion to grant a member ADR benefits, at least seven of the twelve apportioned votes must be in favor (*see* Administrative Code § 13-216).

Prior to issuing a final vote on the petitioner's application, the Board of Trustees conducted meetings and considered the petitioner's application on multiple occasions (*see* NYSCEF Doc. No. 9-11). As relevant to the present judicial review, the following evidence and arguments were presented for consideration by the Trustees. The petitioner's representative presented evidence to show that it was very likely the petitioner's infection could be attributed to a specific co-worker, a fellow police officer who worked shifts with the petitioner at their precinct and tested positive for COVID-19 on August 7, 2021. The representative also relied on so-called "working group" guidelines for ADR cases involving COVID-19, arguing these guidelines included a presumption and/or exemption for certain situations involving vaccine delays due to medical reasons. It was argued that petitioner satisfied the criteria set forth in the guidelines and the presumption arguably applied to the petitioner due to multiple surgeries she had in early 2021. Reference was also made to other cases involving applications by NYPD officers for ADR benefits based on job-related COVID-19 exposure. On October 11, 2023, the Board of Trustees voted on the petitioner's application for ODR and ADR retirement, which concluded in a six-to-six tie vote and

therefore requiring denial of the petitioner's ADR application (see *Matter of Walsh v Scoppetta*, 18 NY3d 850, 852 [2011], quoting *Matter of Meyer v Bd. of Trustees of the New York City Fire Dept., Art. 1-B Pension Fund by Safir*, 90 NY2d 139, 144 [1997] [if the Board of Trustees is unable to pass by majority vote a resolution retiring the member for ordinary or accidental disability, by a time-honored procedural practice the application for accidental disability retirement is denied and the lesser ordinary disability benefits are awarded]).

Then, on February 12, 2024, the petitioner commenced the above-entitled special proceeding to challenge the Trustees' determination, arguing that the denial of her application should be vacated and annulled on the grounds it was arbitrary, capricious, unreasonable and unlawful. Specifically, petitioner argues that the Trustees' decision was contrary to the Trustees' own written guidelines, contrary to credible evidence in the record, and that it was inconsistent with previous positions taken in analogous cases.

In opposition, respondents assert that the final determination should be sustained, arguing that it was reasonable and rational based on the credible evidence supporting the findings that the petitioner failed to meet her burden of establishing causation, *i.e.* that her disabling condition was attributable to, or resulted from, an accident in her city-service and/or that she failed to establish an accident within the meaning of the applicable retirement statutes.

In cases where, as here, there is no statutory requirement of a trial-type hearing, an administrative determination must be confirmed unless it is made in violation of lawful procedure, is arbitrary and capricious, or is affected by an error of law (see CPLR § 7803 [3]; *Matter of Adirondack Wild Friends of the Forest Preserve v New York State Adirondack Park Agency*, 34 NY3d 184, 191 [2019]; *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]). A determination is considered arbitrary and capricious where it is not rationally based, or has no support in the record (*Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624, 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (see *Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 608 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

Importantly, in its review of a final determination, a court may not substitute its own judgment for that of an administrative agency acting within its area of expertise, even though the facts might lead the court to another conclusion (see *Matter of Barry's Bootcamp NYC, LLC v Board of Stds. & Appeals of City of N.Y.*, 195 AD3d 501, 501 [1st Dept 2021]). Therefore, even if another result could also have been rational, the

Trustees' final determination as to the petitioner's ADR application will not be disturbed as long as it is neither irrational, unreasonable, nor contrary to law (see *Madison County Indus. Dev. Agency v Authorities Budget Off.*, 33 NY3d 131, 135 [2019]). Based on the record presented and the above-cited caselaw, the Court concludes that the Board of Trustees' determination was not arbitrary and capricious, unreasonable, or unsupported by credible evidence in the record.

Accidental disability benefits are governed by Retirement and Social Security Law § 507, which prescribes that ADR benefits be provided only to those members who are disabled as the natural and proximate result of an accident sustained in active city service. On an application for ADR benefits, the petitioner bears the burden of demonstrating that her disability arose out of an accident as defined by the Retirement and Social Security Law (see *Brown v New York City Employees' Retirement Sys.*, 99 AD2d 451 [1st Dept 1984]). An agency's determination on an issue, including that of causation, will be upheld if supported by credible evidence in the record (*Muhammad v Shea*, 224 AD3d 510, 510 [1st Dept 2024]; *Matter of Amar v New York City Empls.' Retirement Sys.*, 187 AD3d 687, 688 [1st Dept 2020]; Retirement and Social Security Law §§ 605 [b] [3], [f]).

Additionally, a petitioner is entitled to ADR when the injury sustained was caused by a precipitating accidental event; "an injury-causing event is accidental when it is sudden, unexpected and not a risk of the work performed" (*Matter of Kelly v DiNapoli*, 30 NY3d 674, 682 [2018], interpreting Retirement and Social Security Law § 363 [a] [1] [provides for award of ADR benefits to police officers and firefighters injured in line-of-duty occurrences caused by a sudden and unexpected event that did not arise from a risk inherent in their employment]). By way of contrast, "an injury which occurs without an unexpected event as the result of activity undertaken in the performance of ordinary employment duties, considered in view of the particular employment in question, is not an accidental injury" (*id.* at 681 [internal quotation marks and citation omitted]). "Where, as here, the PPF Board's determination is reached as a result of a tie vote, a reviewing court may not set aside its denial of ADR benefits unless it can be determined as matter of law on the record that the disability was the natural and proximate result of a service-related accident" (*Medina v Shea*, 191 AD3d 475 [1st Dept 2021] [internal quotation marks omitted]).

Considering, petitioner asserts the Board's decision was contrary to the credible documentary evidence in the record substantiating her claim that she contracted COVID-19 while on the job. However, respondents argue that the Board's denial of ADR benefits was rational and supported by credible evidence in the record based on the conclusion that petitioner failed to sustain her burden of establishing that she suffers from a disability that was the natural and proximate result of an accident she sustained in the workplace. Contrary to the petitioner's assertion, the Board of Trustees' finding that the petitioner failed to sufficiently establish a causal connection was not irrational based on the record provided herein.

The problem for the petitioner here is that she has failed to sufficiently prove that her disability, her COVID-19 infection, was due to a service-related accident, rather than a routine risk of the job. The petitioner's claim of a work-relatedness connection was supported only by her contention that it was "very likely" her disability was caused in August of 2021 by her exposure to or by a colleague while they worked together at the precinct and who tested positive shortly before the petitioner. Specifically, the petitioner asserted that she must have been infected by the fellow officer sometime during the early morning shifts on either August 20 or August 21, 2021, when both officers were working. To further demonstrate this theory and to try and establish a timeline, petitioner offered roll-call sheets documenting the days/shift she worked leading up to her positive test on August 24, 2021. However, the record also contains documentation that although both officers worked at the precinct on the days in question, the petitioner was stationed at the main desk while the officer that was the alleged subject of her exposure worked in a different part/location within the precinct. It was also noted that many other officers were present in the precinct during those same shifts and petitioner was in close proximity to many members of the public given that she was assigned to the main desk, located in a high-traffic area. Finally, it was included that the petitioner failed to submit any evidence establishing that this co-worker was actually infectious with COVID-19 during the shared shifts of August 20 or 21 in order to have spread the virus to petitioner. It was shown that the co-worker had tested positive for the virus at least two and a half weeks prior to the petitioner testing positive, which could suggest that the co-worker might have been free from infection at the time they worked together.

Therefore, the Board's conclusion that they could not definitively determine that the exposure happened at work was based on the petitioner's failure to offer any evidence which established any direct link as to work-relatedness, instead relying on circumstantial connections or inferences. Respondents pointed out that petitioner failed or did not attempt to rule out other sources of infection outside of work, petitioner merely stated she did not know of any family who became ill with COVID around that time and that she took decontamination precautions. However, as respondents noted, the petitioner's own Injury Report indicated that she was alone when the injury occurred and did not rule out other non-work sources. Critically, none of the medical professionals that treated the petitioner opined or affirmatively established that her illness was caused by any exposure to an infected co-worker while at work, rather than exposure elsewhere or by others (*see Matter of Anonymous v Kelly*, 115 AD3d 619, 620 [1st Dept 2014] [affirming Medical Board's finding that the cause of the petitioner's illness could not be determined and that the opinions of her doctors were speculative]). Therefore, while the petitioner presented compelling circumstantial evidence, which the Medical Board may have found sufficient, the Board of Trustees' contrary conclusion was supported by at least some credible evidence. Considering, the proffered evidence was not dispositive and the petitioner's conclusions that she contracted the virus due to her exposure to her co-worker were too speculative to meet her burden of proof (*see Picciurro v Bd. of Trustees of New York City Police Pension Fund*, 46 AD3d 346, 348 [1st Dept 2007] [as "the record before us does not as a matter of law support petitioner's theory of causation, we are obliged to affirm"]).

Given that petitioner bore the burden of establishing this connection, and based on the facts presented, the Court finds that it was rational for the Board of Trustees to conclude that petitioner had not established the accident was sufficiently work-related as the source of the infection was too speculative and it was not possible to determine that she had contracted Covid at work due as opposed to through some other means (see *Kelly v DiNapoli*, 30 NY3d 674, 684 [2018]). The Court recognizes that petitioner faced a unique issue of attempting to prove causation for an infection with a virus at a time where the virus was active throughout the entirety of the City of New York. However, notwithstanding the fact that the potential sources of infection for COVID-19 were ubiquitous, the petitioner failed to adequately rule out other possible sources besides work. These points were raised by the Board of Trustees in the meeting transcripts, the members noted that the petitioner's situation was particularly challenging as "there [wa]s no way to prove that this member got infected at this location on this day by this person" which is required on an ADR application (NYSCEF Doc. No. 18 at 8). Thus, the Board had a rational basis for finding that the petitioner failed to prove that her contracting COVID-19 was the natural and proximate result of an accident sustained in the course of her employment as a police officer. As it cannot be found on this record that the petitioner's disability was the natural and proximate result of a service-related accident as a matter of law (*Matter of Walsh v Scopetta*, 18 NY3d 850, 852 [2011]), this Court is without power to reverse the Trustees' determination on these grounds.

Petitioner also claims that the Board of Trustees' action was contrary to and/or disregarded the Board's own written policy outline or guidelines for evaluating COVID-19 ADR cases. The supposed policy/guidelines that petitioner relies on included possible evaluation criteria and/or a policy outline for assessing ADR applications involving COVID-related issues. Petitioner argues that these guidelines apply to this case, and the policy outlines are akin to a statute and/or have the force of law. Petitioner cites to the part of the guidelines that allegedly states that healthcare workers, public safety workers and essential employees with responsibilities placing them in direct contact with the public "will be presumed to have contracted such diseases as a natural or approximate result of an accidental injury received in the performance and discharge of his or her duties" unless proved otherwise by competent evidence (see NYSCEF Doc. No. 7). She argues that the Board of Trustees, by denying her application despite seemingly meeting the above-criteria, acted arbitrarily and capriciously, and inconsistently with their own protocol for COVID-19 related ADR cases.

However, respondents argue(d) that these guidelines were non-binding discussion points and were never formally adopted. Specifically, respondents assert that the subject guidelines were drafted by an ad hoc working group and were never formally adopted by a resolution from the Board of Trustees or established as an agency policy. Respondents are correct that the guidelines petitioner references cannot serve to bind the Board of Trustees in this matter, both because they were informal and never approved but also because they directly contravene the statutory framework and standards established by the Legislature. This point was repeatedly raised by members

of the Board of Trustees at the meetings conducted in this matter, with the Board stating that the outline or criteria was discussed by the working committee, but they were not widely accepted, no vote or definitive conclusion was reached, the Legislature declined to adopt on two occasions, and they had no binding or statutory effect (NYSCEF Doc. No. 18 at 7-14, 19; 28 at 12; 29 at 7-8, 19-22). Accordingly, the Board of Trustees were not required to adhere to any of this material or criteria when reaching a determination on the petitioner's application.

Further, requiring the Board of Trustees to comply with these working group guidelines would undermine the well-established statutory framework for determining these types of claims. The statutory framework for evaluating ADR claims is that which is presently contained in the Retirement and Social Security Law, which remains the sole binding authority. This is noted in the minutes from the transcripts, with the members of the Board discussing that the working group was to develop a structure or set of criteria for members to meet to be considered for long COVID ADR and in an effort to obtain legislation that the Legislature declined to adopt (NYSCEF Doc. No. 28 at 12; 29 at 8). Despite the arguments of some on the Board that the working group outline was like a statute in effect or statutory in nature, the guidelines were discussed for the five city funds that have different systems or structures and were not formally adopted, nor was legislation enacted as a result (NYSCEF Doc. No. 29 at 18-26).

Under the present governing scheme, it is well-settled that the "function and duty of determining the circumstances of the disqualification and of determining the amount of the allowance as provided by the code" is afforded to the Board of Trustees (*Canfora*, 60 NY3d at 351-352). As set forth above, the relevant statute requires an applicant to establish that a disability resulted from a "natural and proximate result" of a line-of-duty accident and a shifting of this burden to the Board of Trustees, as the guidelines would suggest, would alter the established statutory scheme and remove much of the Board's afforded discretion to make causation determinations. Accordingly, requiring that the Board comply with guidelines that have not been adopted as a rule by the Board or enacted as a statute, would be inconsistent with the current statutory mandate and intent of the Legislature.

Additionally, as noted by the respondents, modifying the current statutory scheme as the petitioner requests would undermine the role of the Legislature and the Legislature's intent for the relevant ADR standards to remain undisturbed. Crucially, the respondents point out that while the Legislature could have crafted a new presumptive statute regarding COVID-19 and ADR benefits and did enact laws to modify death benefits for COVID-19 (see RSSL § 607-i; Administrative Code § 13-244.1), it declined to similarly modify the relevant ADR standards in this situation. The respondents further emphasize that a proposed presumptive COVID-19 ADR bill was considered by the New York State Assembly, but the bill did not pass (see NY Assembly Bill A10239, *c.f.* General Municipal Law § 207-p [known as the "HAT Bill", which created a rebuttable presumption for certain communicable diseases like HIV, tuberculosis, or hepatitis as ascertaining when exposure occurred was difficult]). Respondents contend that the

above indicates that the Legislature has "plainly chosen not to extend this reasoning to the context of COVID-19".

While petitioner's belief that the traditional analysis does not adequately consider the unique circumstances of widespread COVID-19 infection resulting in a worldwide pandemic is understandable and of valid concern, such a concern is one that must be addressed by the Legislature on the first instance. Therefore, absent such a formally adopted or governing presumptive law, it was not arbitrary or capricious for the Board of Trustees to evaluate ADR applications alleging disability as a result of a COVID-19 infection using the traditional ADR analysis.

Petitioner's challenge of the Board's determination on grounds that it was inconsistent with previous Board actions taken on analogous cases is also unsuccessful. Petitioner relies on six other cases involving NYPD officers who were supposedly granted ADR for job-related COVID-19 exposure. However, it has not been shown on this record that the Board Trustees' prior approval of other ADR applications involving COVID-19 and with essentially similar facts, created a position/policy or administrative precedent to be followed for consistent results (*Leggio v Devine*, 34 NY3d 448, 461 [2020]; *Matter of Charles A. Field Delivery Serv., Inc.*, 66 NY2d 516, 519 [1985]). Importantly, the documents in the record and the petitioner's filings do not provide the Court with sufficient detail as to the facts or circumstances of these other cases to determine whether they are sufficiently similar to those here. The descriptions petitioner provided for these other cases are extremely minimal, as are the submissions regarding these cases provided in the record. Without more, this does not demonstrate that the Board of Trustees reached a different result based on essentially the same facts or disregarded its own precedent (see *McClave v Port Auth. of New York and New Jersey*, 134 AD3d 435 [1st Dept 2015]).

Notwithstanding the petitioner's contention that she should have been provided with redacted minutes for the other six COVID-19 ADR cases that were approved, these materials were not part of the administrative record, and this request should not be considered now. Nonetheless, it cannot be disputed that these prior determinations would not be dispositive or binding as to petitioner's case, so long as the Board provided a rational explanation behind their determination (see *Rivera v Shea*, 211 AD3d 594, 595 [1st Dept 2022] [rejecting the argument that the Board of Trustees was necessarily bound by an earlier ADR decision about an alleged similar situation]). As noted on the record at one of the subject Board meetings, the circumstances presented in the petitioner's case were "somewhat unique" and different (NYSCEF Doc. No. 29 at 8, 16), and the Board has tried to look at every case in "its own specific set of facts" (*id.* at 27). The Board engaged in extensive review of the facts and the entirety of the record in its consideration of the petitioner's application and indicated the reasoning behind reaching a different result (*S. St. Seaport Coalition, Inc. v Landmarks Preserv. Commn. of City of New York*, 217 AD3d 468, 469 [1st Dept 2023], *lv to appeal denied*, 41 NY3d 908 [2024]). In those cases that are "nuanced and fact and situationally specific" such as this one, the Board's refusal to award ADR benefits despite what it

