

**Matter of Boyce-Landeau v City of New York**

2025 NY Slip Op 32510(U)

July 7, 2025

Supreme Court, New York County

Docket Number: Index No. 156080/2024

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 156080/2024

IN THE MATTER OF THE APPLICATION OF POLICE OFFICER ACCIMA N. BOYCE-LANDEAU, Petitioner,

MOTION SEQ. NO. 001; 004

- v -

CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, POLICE COMMISSIONER EDWARD A. CABAN in his official capacity, NYPD DEPUTY COMMISSIONER EDWARD DELATORRE, JR., in his official capacity, NYPD INSPECTOR ANTHONY S. GAZIS, in his official capacity, and NYPD DEPUTY INSPECTOR PETER D. HATZOGLOU in his official capacity, Respondents.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 31, 32, 33, 66, 67, 68, 69, 70, 71, 72, 88, 92, 93, 94, 98, 99, 100

were read on this motion to/for ARTICLE 78

The following e-filed documents, listed by NYSCEF document number (Motion 004) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172

were read on this motion to/for SANCTIONS

Police Officer Accima N. Boyce-Landeau initiated this proceeding claiming that respondents, New York City Police Department's ("NYPD") improperly denied petitioner's line of duty benefits. According to petitioner, she slipped from the second or third tread of the stairs located at the 72nd precinct and fell down to the landing between the 1st floor and the 2nd floor. Petitioner avers that she immediately reported the incident to several supervisors present, and a Line of Duty Injury ("LODI") report was subsequently generated. Petitioner declined medical attention at the time of the incident but was later admitted to the Emergency Room on February 5, 2024. As to the cause of her injury, the hospital report noted that "[petitioner] felt like there was dust on the stairs while walking down them, slipped and fell, denies any head trauma." The LODI report generated after an investigation found that petitioner's incident was reported before the end of her shift, she was not negligent in the fall, and further recommended that the LODI designation be approved. On February 18, 2024, petitioner's LODI report was then electronically forwarded to the NYPD's Medical Division which denied the LODI designation. Petitioner's subsequent appeals of this determination were also denied.

Now, in Mot. Seq. 001, petitioner moves the court for an order directing respondents to reimburse petitioner for all out-of-pocket medical expenses and to pay all outstanding medical

treatment related to the February 1, 2024 LODI. Petitioner also urges the court to annul respondents' April 12, 2024, denial of petitioner's LODI designation and remand this matter to respondents for reconsideration and redetermination not inconsistent with the court's decision.

With respect to Mot. Seq. 004, petitioner seeks sanctions against respondents for allegedly engaging in frivolous conduct to delay this proceeding and obstruct petitioner's access to relief.

The motions are consolidated for disposition.

As it relates to Mot. Seq. 001, petitioner posits that as per the NYPD's practice, there are no other investigations conducted beyond the investigation that resulted in the LODI report that was forwarded to the NYPD's Medical Division. The NYPD's Medical Division denied petitioner's LODI designation application on February 19, 2024, concluding that "[t]his incident is not deemed line of duty because the member of service failed to take proper care in performing the described task thus resulting in said injury. In addition, there were no additional contributing factors or hazardous conditions mentioned in any of the statements." Petitioner contends that insofar as the NYPD's Medical Division committee, headed by Commanding Officer Anthony S. Gazis ("Gazis") did not identify the information they relied upon before denying the LODI designation application, same is in violation of case law in New York governing the subject matter.

Petitioner submitted an appeal of the denial to the NYPD's Medical Division on February 28, 2024, instead of to the Deputy Commissioner of the NYPD Office of Labor Relations. According to petitioner, the NYPD's Medical Division committee, as headed by Gazis' subordinate, Deputy Inspector Peter D. Hatzoglou ("Hatzoglou"), upheld respondents' denial of petitioner's LODI designation, and denied petitioner's appeal on the basis that "[t]his incident is not deemed line of duty because the member of service failed to take proper care in performing the described task thus resulting in said injury. In addition, there were no additional contributing factors or hazardous conditions mentioned in any of the statements and the member of service was not acting in their official capacity as a New York City Police Officer, taking police action. It was also reported 5 days late." Petitioner contends that the NYPD's Medical Division committee again did not identify any information that was considered and therefore, the denial was improper.

A second appeal letter was submitted to the NYPD's Deputy Commissioner of Labor Relations. Petitioner included photographs of the staircase that petitioner fell on as proof in support of the appeal. The second appeal was likewise denied, but petitioner notes that the respondents did not indicate whether they reviewed the supporting documentation submitted along with the second appeal before denying same. Petitioner asserts that all the reasons provided as grounds for denying the LODI designation are refuted by the findings in the LODI report generated after the injury. Specifically, petitioner posits that the invocation of the terms "routine function" and "direct assignment" as grounds for denial was improper because the terms are not applicable to LODI designations. Thus, petitioner urges the court to find that respondents' determination denying the LODI designation was arbitrary and capricious and made in violation of Administrative Code of City of NY § 12-127(a) (NYSCEF Doc. No. 34, *amended verified petition*). Petitioner submits a copy of the LODI designation report, appeals, and denials in support of the application (NYSCEF Doc. Nos. 5-17).

Petitioner argues that respondents have not proffered any evidence contravening the findings that she was injured in the line of duty as contained in the LODI report and as such, respondents'

denial of the LODI designation is erroneous. According to petitioner, she explained to respondents in her second appeal letter that her injury occurred while carrying out her duty of signing out at the end of her tour. Next, petitioner also insists that respondents have deprived the court of the opportunity to conduct a meaningful judicial review because respondents have failed to disclose their reasoning for denying petitioner's LODI designation. Therefore, petitioner contends that respondents' April 12, 2024, letter denying petitioner's LODI designation must be annulled. Furthermore, petitioner articulates that, to the extent respondents have approved LODI designations to other police officers who were injured in similar fashion as her, the grounds proffered as the basis for denial of the designation are meritless. Respondents are not entitled to deference ordinarily accorded to administrative agency determinations if her application was not denied in good faith, argues petitioner, insofar as the NYPD's Medical Division committees failed to refute any of petitioner's evidence or address petitioner's assertions regarding the staircase defects she identified in her second appeal letter. Lastly, petitioner contends that the NYPD's practice of not maintaining records of the final vote of each member in every agency proceeding in which a member votes violates the New York State laws that require it to maintain minutes (NYSCEF Doc. No. 66, *petitioner's memo of law*). As relevant to this application, petitioner furnishes copies of, *inter alia*, LODI designation application and determinations (NYSCEF Doc. Nos. 5-65).

Respondents oppose the motion and cross-move, pursuant to CPLR 3211(a)(5) and (7), seeking an order dismissing the petition. They contend that the instant petition should be denied as untimely insofar as it should have been commenced no later than June 19, 2024, instead of July 1, 2024. At a minimum, claim respondents, petitioner was aware that her LODI designation application had been denied when she filed her first appeal on February 28, 2024, and the two subsequent appeals do not toll the four-month statute of limitations. To have timely commenced this proceeding, respondents assert that petitioner had to have filed the petition within four months of February 19, 2024.

Next, respondents argue that petitioner's injury-causing accident does not fall within the two scenarios envisioned by the Administrative Code of City of New York § 12-127 under which the NYPD will pay for the medical care of a police officer injured in the course of duty. According to respondents, while there is no case law interpreting the phrases "while actually employed in the discharge of police orders of his or her superior officers" from § 12-127(a) or "in the actual performance of duty, and by reason of the performance of such duty" from § 12-127(b), accidental slips and fall, such as plaintiff's fall, is outside the statute's ambit. Respondents maintain that petitioner's initial LODI designation application was denied because petitioner "failed to take proper care in performing the described tasks thus resulting in injury. In addition, there were no additional contributing factors or hazardous conditions mentioned in any of the statements," and thus, the denial was not arbitrary and capricious because petitioner's injury resulted from her own negligence. Respondents note that while petitioner's claim that "[i]t felt like the stairwell was slippery from a coat of dust" was raised for the first time in her appeal letter dated February 28, 2024, it does not rebut the NYPD's Medical Division committee's determination that petitioner fell due to her own negligence. Also, respondents assert that, because walking down the stairs to leave the precinct at the end of a shift does not constitute being "actually employed in the discharge of police orders" or "in the actual performance of duty", it was not arbitrary and capricious for the NYPD's Medical Division committee to deny the first appeal after finding that petitioner was not acting in her official capacity as a New York City Police officer at the time of her injury. With regard to denial of the first appeal, respondents posit that, to the extent petitioner reported her injuries five days late, the late report contravenes the NYPD Administrative Guide Procedure 330-03 which outlines the procedure

for reporting a line of duty injury. Further, the denial of the second appeal was not arbitrary and capricious, argue respondents, because petitioner did not provide evidence in support of the second appeal warranting a different outcome. Specifically, there were no contributing factors to link the injury to her duties as a police officer. They maintain that in denying the LODI designation appeals, they did not overlook evidence submitted.

Lastly, respondents argue that contrary to petitioner's contentions, NYPD's Medical Division committee meetings do not implicate deliberations and decisions regarding public policy and therefore, the court should give deference to the determinations made with respect to denying petitioner's LODI designation application (NYSCEF Doc. No. 93, *respondents' opposition and cross-motion*).

In opposition to the cross-motion, petitioner contends that the application is timely insofar as she was aggrieved only after fully exhausting all remedies available to her. Therefore, she was not aggrieved until April of 2024 when she received the final denial letter from the NYPD after she had exhausted the NYPD's internal two-step appeals process. Petitioner maintains that the NYPD's Office of Labor Relations rendered a final and binding determination denying petitioner's LODI application in the letter dated April 12, 2024. Therefore, since the instant petition was filed on July 1, 2024, which was less than three (3) months after the April 12, 2024, determination, petitioner asserts that the petition was timely filed (NYSCEF Doc. No. 100, *petitioner's memo of law in opposition to cross-motion*).

In Mot. Seq. 004, petitioner moves the court, pursuant to 22 NYCRR § 130-1.1, for an order granting sanctions against respondents for their alleged engagement in a deliberate pattern of frivolous and bad-faith litigation tactics to delay this proceeding and obstruct petitioner's access to relief. Petitioner claims that respondents, in addition to repeatedly seeking adjournments on the grounds that they needed to gather documents already in their possession, they also made a material misrepresentation as to the date of NYPD's final and binding determination. Furthermore, petitioner contends that respondents further delayed the matter by failing to engage in settlement discussions as directed by the court. Given that the relevant documents that respondents relied on in support of their dismissal motion were already in their possession, argues petitioner, respondents did not have a good cause to request an extension of time to secure documents. Next, respondents secured a second adjournment under a false pretension that they needed time to "locate and review remaining necessary files", claim petitioner. Petitioner asserts that, to the extent respondents' cross-motion to dismiss did not include newly discovered documents but rather cited to records already available to them before their first adjournment request, the adjournment requests were unnecessary and made under false pretenses, warranting sanctions.

Concerning the statute of limitations arguments raised in the cross-motion to dismiss, petitioner sets forth that since the Notice of Appeal demonstrated that the February 19, 2024, denial was not final and binding, it was disingenuous for respondents to claim that the statute of limitations timeline commenced on February 19, 2024, when petitioner's LODI application was initially denied. Therefore, the omission of the Notice of Appeal shows that respondents knowingly attempted to mislead the court that petitioner did not have any further administrative relief in the form of an appeal, petitioner posits. Such omission constitutes a violation of the New York Rules of Professional Conduct insofar as the withholding constituted an affirmative misrepresentation of a material fact. Petitioner maintains that respondents knew petitioner had long surpassed the probationary period and yet, respondents rejected petitioner's request that they correct their filing or

withdraw the statute of limitations argument. Accordingly, sanctions are warranted, argues petitioner, to deter frivolous misconduct, preserve judicial resources, and uphold the integrity of the court. Lastly, petitioner asserts that the delay occasioned by respondents was strategic because the NYPD has commenced a survey process against her, even though she was moved to Restricted-Duty on May 9, 2024, and under ordinary circumstances, the NYPD would not have commenced the survey process against her until May 2025 (NYSCEF Doc. No. 105, *petitioner's memo of law for sanctions*).

In response, respondents contend that, contrary to petitioner's contentions, respondents were obliged to investigate petitioner's allegations and thus, the adjournments were proper. According to respondents, their reliance on documents annexed to the petition does not demonstrate bad faith and is not sanctionable. Respondents insist that they took prompt steps to request relevant documentation from the NYPD and discussed the possibility of stipulating to a resolution as the court directed. Respondents note that they relied on documents filed in support of the petition because the evidentiary requirements of making a cross-motion to dismiss dictates that extrinsic evidence may not be considered. Therefore, it was appropriate for respondents to urge the court to ignore some of the exhibits that were annexed to the amended petition which were outside of the administrative record. With respect to omitting the Notice of Appeal, respondents posit that the opportunity to appeal the LODI designation determination does not affect the statute of limitations defense. As such, disagreements about the merits of the statute of limitations arguments do not warrant the imposition of sanctions. Further, respondents set forth that, to the extent they were not obliged to accept petitioner's settlement proposal, their post-oral argument settlement negotiation conduct were proper. Lastly, respondents claim that the NYPD's Medical Division is empowered to conduct a medical examination, or "survey," of a member, like petitioner, in city service who is on limited or restricted duty for more than one year because of a physical impairment or injury. As such, respondents assert that a LODI status does not determine when a survey may be commenced (NYSCEF Doc. No. 158, *memo of law in opposition*). Respondents submit copies of documents and e-mail exchanges relating to discussions about adjournment and case resolution in support of their memorandum of law in opposition (NYSCEF Doc. Nos. 159-172).

The standard of review of an agency determination via an Article 78 proceeding is well established. The court must determine whether there is a rational basis for the agency's determination or whether the determination is arbitrary and capricious (see *Matter of Gilman v New York State Div. of Housing and Community Renewal*, 99 NY2d 144, 149 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or 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]).

Administrative Code of City of NY § 12-127(a), which concerns City employees injured in the course of duty, provides in relevant part that New York City shall pay the approved medical bill of "[a]ny member of the uniformed forces of the fire or police departments... who shall be injured... as the result of illness traceable directly to the performance of police" duty.

As a threshold matter, the court finds that contrary to respondents' contentions in their cross-motion to dismiss in Mot. Seq. 001, petitioner's application is not barred by the statute of limitations and is therefore timely. It is well-settled that the statute of limitations in an Article 78 proceeding is four months from when the agency's determination becomes final and binding (CPLR 217; *Best Payphones, Inc. v Dep't of Info. Tech. & Telecomms.*, 5 NY3d 30, 34 [2005]). The Court of Appeals

has held that “[a]n agency determination is final—triggering the statute of limitations — when the petitioner is aggrieved by the determination” (*Carter v State*, 95 NY2d 267, 270 [2000], quoting *Matter of Biondo v New York State Bd. of Parole*, 60 NY2d 832, 834 [1983]). “A petitioner is aggrieved once the agency has issued an unambiguously final decision that puts the petitioner on notice that all administrative appeals have been exhausted” (*Carter*, 95 NY2d at 270). Petitioner’s administrative appeals were exhausted when respondents issued their April 12, 2024, determination, a final decision, denying petitioner’s LODI designation application. As such, petitioner was aggrieved by the final and binding April 12, 2024, determination, triggering the statute of limitations. Therefore, the instant application is timely since it was commenced on July 1, 2024, well within the four-month statute of limitations deadline.

Here, petitioner was employed by the NYPD as a Police Officer and was acting within the scope and furtherance of her duties as Police Officer. The Line of Duty Injury Report prepared by the NYPD sets forth the date, time, and place of the accident and the manner in which the petitioner was injured. Respondents do not dispute that petitioner immediately notified the Desk Officer at the 72<sup>nd</sup> precinct of her fall down the stairs. The detailed explanation as to how she fell on the staircase and her interactions with other officers at the precinct immediately thereafter are not inconsistent with the information contained in the LODI report. Also, respondents do not explain the investigation conducted, if any, or how the information provided in the appeal was evaluated to provide the basis for the NYPD’s Medical Division’s denial of petitioner’s LODI designation application. Next, respondents’ contention that walking down the stairs is a routine function such that without any contributing factors, petitioner’s injury was a result of her own negligence, is unconvincing. Respondents fail to persuade the court that where, as here, petitioner was injured by falling down a staircase at a precinct while on her way to clock-out for the day is not “traceable directly to the performance of police” duties (*see* Administrative Code of City of NY § 12-127[a]).

Concerning contributing factors, petitioner, as part of her second appeal, attached a photograph showing that the anti-slip coating on the staircase nose on each tread of the stairs was worn, exposing the metal of each stair nose. Petitioner also proffered the ER report which stated that petitioner informed the hospital that the staircase where she was injured felt dusty. Furthermore, respondents fail to convince the court that it was not arbitrary and capricious to deny petitioner’s LODI application on the grounds that it was “reported five days late” given the requirements of Administrative Guide Procedure No. 330-03. Respondents do not demonstrate that the Administrative Guide imposes requirements, instead of acting as a guide for the exercise of an officer’s professional discretion (*see Galapo v City of New York*, 95 NY2d 568, 575 [2000]; *Desmond v City of New York*, 88 NY2d 455, 465 [1996]; *Crespo v City of New York*, 191 Misc. 2d 395, 397 [Sup Ct, NY County 2002]). Thus, the petition seeking annulment of respondents’ April 12, 2024, denial of petitioner’s LODI designation and remanding this matter to respondents for reconsideration is granted.

Turning now to Mot. Seq. 004, 22 NYCRR §130-1.1 provides in relevant part that: (c) For purposes of this Part, conduct is frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

Here, petitioner fails to establish, to the court's satisfaction, that respondents' conduct is frivolous as set forth in 22 NYCRR §130-1.1(c)(1)-(3) (see *Nugent v City of New York*, 189 AD3d 631, 632 [1st Dept 2020]; *Parametric Capital Mgt., LLC v Lacher*, 26 AD3d 175, 175 [1st Dept 2006]). Based on the record, petitioner does not demonstrate that the apparent delay was occasioned simply to prolong the resolution of the proceeding (see *Matter of Kings County Hosp. v M.R.*, 226 AD3d 513, 513 [1st Dept 2024]). Respondents provide proof that they took steps to request relevant documentation from the NYPD. Therefore, the application seeking sanctions is denied. All other arguments have been considered and are without merit. Accordingly, it is hereby

**ORDERED** that Mot. Seq. 001 is granted to the extent that respondents' April 12, 2024, denial of petitioner's LODI designation is annulled and remanded to respondents for reconsideration and redetermination not inconsistent with the Court's decision and order, including petitioner's claim for reimbursement of medical costs; and it is further

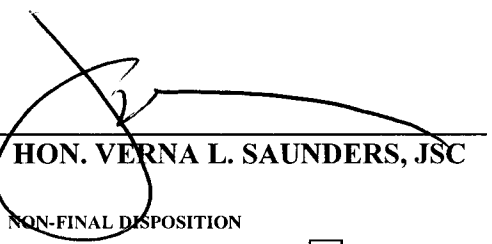
**ORDERED** that the cross-motion seeking dismissal of Mot. Seq. 001 is denied; and it is further

**ORDERED** that Mot. Seq. 004 is denied; and it is further

**ORDERED** that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioner shall serve a copy of this decision and order, with notice of entry, upon respondents.

This constitutes the decision and order of the court.

July 7, 2025

  
HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>	