

Lindemann v New York City Fire Pension Fund

2025 NY Slip Op 33481(U)

September 16, 2025

Supreme Court, New York County

Docket Number: Index No. 152679/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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Lindemann, Darren

Petitioner,

- v -

The New York City Fire Pension Fund et al

Respondent.

-----X

INDEX NO. 152679/2025

MOTION DATE 02/28/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 13, 16, 35 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the petition is granted in part, and the matter is remanded back to the Respondents for review of Petitioner’s application for accidental disability retirement.

Background

Petitioner Darren Lindemann is a retired firefighter who served since 2002. During his time in the FDNY, Petitioner sustained a number of work-related injuries. Relevant for this petition, he sustained fifteen injuries to his right shoulder and three to his left elbow. Of these injuries, most relevant for this motion are the 2013 Injury and the 2020 Injury. In 2013, Petitioner was climbing the stairs of a building he was assigned to search and slipped on some ice, falling hard on his left elbow and shoulder. In the December 2020 Injury, Petitioner was searching an apartment when a large heavy object fell on him, causing damage to his head, neck, back, both shoulders, and both elbows. In 2021, Petitioner was evaluated by various doctors and ultimately deemed unable to perform full firefighter duties.

Petitioner applied for disability benefits and his application was reviewed by the Medical Board of the Fire Pension Fund. The Medical Board recommended the Petitioner for ordinary disability retirement (“ODR”), based on a conclusion that the injuries were not casually related to the current condition of his shoulder and elbow, and that said conditions were solely the result of latent arthritis. The Board of Trustees voted 6 to 6 on the matter of granting Petitioner Accidental Disability Retirement (“ADR”), thus requiring that the Medical Board’s recommendation of ODR be passed. Petitioner brings the present timely petition to challenge that final determination, and Respondents oppose on the grounds that the final determination was supported by credible evidence.

Standard of Review

A party may bring an Article 78 petition to challenge the final determination of an administrative agency. CPLR § 7801(1). A court must give great deference to the agency’s decision and cannot “interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious.” *Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]. Judicial review is also available if the agency’s determination was “contrary to law or procedure.” *Barrett Japaning, Inc. v. Bialobroda*, 190 A.D.3d 544, 545 [1st Dept. 2021]. An action is irrational or arbitrary and capricious if “it is taken without sound basis in reason or regard to the facts.” *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1027 [1st Dept. 2021].

Discussion

Petitioner seeks a judgment annulling the Final Determination and ordering Respondents to grant him ADR, or, in the alternative, a remand for consideration of the full medical record.

Respondents oppose. For the reasons that follow, the alternative relief is granted, and the matter is remanded.

The Medical Board Failed to Consider Evidence Related to Causation

Petitioner argues that the Medical Board's consideration of evidence showing a link between the various injuries he suffered and the ultimate condition of his elbow and shoulder was conclusory and at times factually incorrect. Regarding the 2020 Injury, Petitioner presented an MRI and a report from a Dr. Allen indicating that the 2020 Injury exacerbated the issues Petitioner had with his left elbow, which was not mentioned by the Medical Board. The Medical Board also did not mention the CD-72 injury reports related to Petitioner's right shoulder, nor the diagnoses from Drs. Henry and Taylor that the work-related injuries had caused post-traumatic arthritis in the shoulder. Despite the Medical Board stating that there was "no objective evidence" that the 2020 Injury exacerbated the arthritis in Petitioner's right shoulder, Dr. Taylor's report specifically found repeatedly that Petitioner was suffering from post-traumatic arthritis as a result of the 2020 Injury.

As an initial matter, when a line-of-duty injury exacerbates a pre-existing condition, the incident is considered to be a proximate cause of the injury and ADR is available. *Tobin v. Steisel*, 64 N.Y.2d 254, 259 [1985]. Therefore, regardless of whether the Petitioner's current injuries to his shoulder and elbow were caused by the various injuries sustained over the course of Petitioner's career or whether the current injuries were originally caused by unrelated arthritis, if the 2020 Injury exacerbated the injuries to his shoulder and elbow then the Petitioner would be entitled to ADR benefits. Additionally, the general standard of review for these cases is the 'some credible evidence' standard, which forestalls a court from overturning the Board of

Trustees' final determination so long as there was "any credible evidence of the lack of causation" before them. *Cusick v. Kerik*, 305 A.D.2d 247, 248 [1st Dept. 2003].

Respondents point to the fact that the Medical Board considered an x-ray of Petitioner's elbow taken the day of the 2020 Injury, x-rays from 2013, and various MRIs over the years of Petitioner's shoulder as proof that the 'some credible evidence' standard was satisfied. But although the Medical Board did review some credible medical evidence, this does not end the inquiry. The First Department has held that "fairness demands that the Medical Board and the Board of Trustees consider all of the relevant medical evidence submitted by petitioner and that the Medical Board clearly state the reasons for its recommendations." *Matter of Agnelli v. Kelly*, 96 A.D.3d 471, 471 [1st Dept. 2012]; *see also Matter of Kiess v. Kelly*, 75 A.D.3d 416, 417 [1st Dept. 2010] (holding that a petition should be remanded when the Medical Board did not consider all of the submitted medical evidence); *Matter of Fernandez v. Board of Trustees*, 81 A.D.3d 950, 952 [2nd Dept. 2011] (remanding an ADR petition when the Medical Board failed to explicitly address evidence submitted showing causation).

Here, the Medical Board claimed that there was "no" evidence showing causation for Petitioner's injuries, yet he clearly submitted medical evidence that showed causation. Furthermore, Petitioner has pointed to several places in the record where the Medical Board stated that a particular x-ray or MRI found no evidence of injury, but the record in question explicitly stated that it had found evidence of injury (for instance, whether or not a 2015 x-ray of Petitioner's left elbow showed evidence of "degenerative changes"). This instant matter is distinguishable from *Mungiguerra*, where the petitioner there failed to present evidence that conflicted with the Medical Board's conclusion. *Matter of Mungiguerra v. Nigro*, 234 A.D.3d 576, 577 [1st Dept. 2025]. Therefore, a remand for a new medical findings and reports by the

Medical Board and a new determination by the Board of Trustees is proper. Accordingly, it is hereby

ADJUDGED that the petition is granted in part; and it is further

ORDERED that the matter is remanded for new medical findings and report by the Medical Board and a new determination by the Board of Trustees, consistent with this Decision and Order.

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LYLE E. FRANK, J.S.C.

9/16/2025
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE