

Matter of Mullane v Caban

2025 NY Slip Op 34166(U)

October 31, 2025

Supreme Court, New York County

Docket Number: Index No. 156375/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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IN THE MATTER OF THE APPLICATION OF EDWARD
MULLANE,

INDEX NO. 156375/2024

Petitioner,

MOTION DATE 07/12/2024

- v -

MOTION SEQ. NO. 001

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

**DECISION + ORDER ON
MOTION**

Respondent.

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 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 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

Petitioner Edward Mullane, a retired Deputy Chief of the New York City Police Department ("NYPD"), commenced this proceeding pursuant to Article 78 of the CPLR, seeking to annul the determination of the Board of Trustees (the "Trustees") of the Police Pension Fund, Article II (the "PPF"), which denied his application for Accident Disability Retirement ("ADR") benefits.

Petitioner's application stemmed from two line-of-duty ("LOD") injuries to his left knee sustained on October 2, 1990, and May 3, 1991. Following the initial injury, the petitioner underwent arthroscopic surgery on November 16, 1990. Following the second injury in May 1991, the petitioner returned to limited duty on May 10, 1991, and was subsequently returned to full duty status on July 14, 1993. Crucially, the record demonstrates that the petitioner remained on uninterrupted full duty status for 10,137 days (approximately 27 years), until he was placed on restricted or limited duty on April 15, 2021. Within that 27-year period, the petitioner was promoted multiple times, eventually rising to the rank of Deputy Chief.

The petitioner filed for ADR on October 14, 2021. The PPF Medical Board examined the petitioner and recommended approval of his ADR application four

separate times (January 11, 2022, August 16, 2022, January 3, 2023, and July 11, 2023), finding the disability was caused by the LOD injury of May 3, 1991. The Trustees reviewed the ADR application multiple times, remanding it three times for clarification regarding the causal connection because of the significant lapse in time and the uninterrupted full duty status. On March 13, 2024, the Trustees considered the application a final time and the application was denied by a 6-6 tie vote (*see Canfora v Board of Trustees of Police Pension Fund of Police Dept. of City of New York*, 60 NY2d 347, 352 [1983]).

Judicial review of an ADR determination denied by a tie vote is exceedingly narrow and limited. The Court cannot set aside the Trustees' denial of accidental disability retirement resulting from a tie vote unless "it can be determined as a matter of law on the record that the disability was the natural and proximate result of a service-related accident." (*Canfora*, 60 NY2d at 352). While the Trustees are bound by the Medical Board's finding that the member is disabled, the Board of Trustees retains the ultimate authority to determine causation and is not bound by the Medical Board's recommendation on this issue (*see Smith v City of New York, Fire Department, Board of Trustees*, 208 AD3d 1335, 1337 [2d Dept 2022]; *Canfora*, 60 NY2d at 351; *Picciurro v Board of Trustees of the New York City Police Pension Fund*, 46 AD3d 346, 348 [1st Dept 2007]).

The ultimate question before this Court is whether the administrative record contains any credible evidence supporting the determination by the Trustees, after a tie vote, that the petitioner failed to meet his burden of proving his disability was the natural and proximate result of his LOD injuries. The answer to that question is yes. The record does provide objective, credible evidence supporting the determination by the Trustees that the petitioner failed to meet his burden. That evidence includes the extraordinary 27-year lapse in time between the LOD injuries to the left knee and the plaintiff being placed on restricted or limited duty. The petitioner returned to full duty in July 1993 and maintained this status for 10,137 days (27 years) without a single documented limited or restricted duty period until April 2021. Denials of ADR benefits based on substantially shorter gaps and immediate returns to full duty have been upheld by appellate courts who have found such evidence indicative of a lack of causal connection (*see Visconti v Kelly*, 49 AD3d 273 [1st Dept 2008] [five years]; *Dugan v Kerik*, 16 AD3d 142 [1st Dept 2005] [fifteen years]; *Calzerano v Board of Trustees*, 245 AD2d 84 [1st Dept 1997] [three to six years]).

In addition to the long period of uninterrupted full duty status, the record details significant gaps in documented treatment, including two periods of

approximately 12 and a half years each (4/3/91 to 10/17/03 and 3/24/03 to 11/24/20). The ability of the petitioner to perform his duties for such an extensive period without documented medical intervention strongly suggests a break in the chain of causation.

The Medical Board, and subsequently the petitioner, have repeatedly asserted that the petitioner was able to mitigate his symptoms because he performed administrative work in assignments that shielded him from the rigors and physical stress of work in the field. The respondents have articulated a rational basis for rejecting this explanation, mainly that the petitioner was never officially placed on administrative duty and, according to the job requirements outlined in his Patrol Guide, he would have been expected to perform duties in uniform, respond to major radio runs, and assume command monthly. The absence of documentation proving that the petitioner was specifically excused from these physically demanding duties (as occurred in similar past cases reviewed by the Trustees) provides additional credible evidence to contradict the causal link proffered by the Medical Board. Furthermore, the Medical Board acknowledged that the petitioner was transferred back to the field in 2020 and claimed that his performance of street duties such as walking and standing for lengthy periods of time exacerbated his symptoms to the point where he had to be placed on restricted or limited duty. Left unexplained in the record is how the petitioner was able to function as a police officer for 27 years without having to engage in lengthy periods of walking and standing while performing his duties (*see Matter of Chacon v McNeill*, 175 AD3d 426, 427 [1st Dept 2019])

The medical records also indicate that in November 2020, the petitioner was diagnosed with a complex tear of the medial meniscus of the right knee, and primary osteoarthritis of the right knee, an uninjured limb. The appearance of similar degenerative disease in the contralateral (uninjured) knee, occurring contemporaneously with the disabling symptoms in the left knee, suggests that the ultimate disability may be attributable to systemic or age-related degeneration and/or other degenerative conditions that were completely independent of the 1991 LOD injury. At the very least all of the evidence considered by the Trustees furnishes a rational basis for the Trustees to question or doubt whether the disability was the natural and proximate result of the service accident.

It is undoubtedly true, as the petitioner states, that a LOD injury can precipitate a latent physical condition that later become symptomatic and disabling. (*see Matter of Boder v O'Neill*, 170 AD3d 528, 529 [1st Dept 2019]; *Matter of Salvia v Bratton*, 159 AD3d 583, 584 [1st Dept 2018]. However, the issue here is

not whether a latent condition can qualify for ADR, but whether the petitioner successfully sustained his burden to connect the 1991 and 1993 accidents to the 2021 disability despite substantial credible evidence to the contrary. Nor did the Trustees simply ignore the findings of the Medical Board as the petitioner claims, and the findings of the Medical Board were not the only competent evidence on the issue of causation before the Trustees. (*see Boder*, 170 AD3d at 529; *Salvia*, 159 AD3d at 584). The competent evidence supporting the Trustees' conclusion was both the lengthy period of time that elapsed between the LOD injuries and the onset of the disabling condition coupled with the petitioner's prolonged, officially unrestricted full-duty status over a period of nearly three decades.

Far from ignoring the findings of the Medical Board, the record shows that the Trustees repeatedly sought a clear, verifiable rationale explaining why the 27-year gap, categorized by the Trustees as continuous full duty, did not break the chain of causation. The Medical Board repeatedly suggested that the petitioner was able to work with a latent condition because his job functions were mostly administrative during that time period. As the respondents point out, mostly administrative does not mean exclusively administrative. It is uncontroverted that the petitioner's responsibilities, at least officially, required him to be in the field on a continuous basis. Neither the petitioner nor the Medical Board explain or document whether the petitioner was ever exempt from field work, as a result of a LOD injury, at any point during his last 25 years of full duty. Since the Trustees found the Medical Board's explanations regarding administrative duty insufficient given the presumptive duties required by the Patrol Guide and given the evidence of non-LOD related osteoarthritis in the right knee, the Trustees' denial of the ADR application (by a 6-6 tie vote) is supported by credible evidence of a lack of causation.

Under the applicable judicial standard for reviewing a tie vote denial, the presence of any credible evidence showing lack of proximate causation mandates that the Court uphold the denial. Accordingly, this Court finds that the determination of the Trustees, resulting from a 6-6 tie vote and denying the petitioner's application for Accident Disability Retirement benefits, was rational and supported by credible evidence in the record demonstrating a lack of proximate causation between the 1991 and 1993 LOD injuries and the ultimate disability in 2021. The Court cannot determine, as a matter of law on the record, that the disability was the natural and proximate result of a service-related accident. Accordingly, the petition is denied and the proceeding is dismissed.

WHEREFORE, it is ORDERED and ADJUDGED that the petition is DENIED in its entirety, and the proceeding is dismissed.

The forgoing constitutes the decision and order of this Court.



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10/31/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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