

McEneaney v Kavanagh

2025 NY Slip Op 34242(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 155989/2024

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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DENIS A MCENEANEY,

Petitioner,

- v -

LAURA KAVANAGH, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY FIRE DEPARTMENT ARTICLE I-B
PENSION FUND, ROBERT BRAFF, CARL GUILLAUME,
FREDERICK RAPOPORT, LOUIS LOMBARDI, DAMIAN
MARTINO, PETER NEUMANN, LAWRENCE SCHARER,
CHARLES LAMARCA

Respondent.

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INDEX NO. 155989/2024
MOTION DATE 06/28/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 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

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

Upon the foregoing documents, this motion is decided as follows. In this proceeding pursuant to CPLR Article 78, petitioner DENIS A MCENEANEY, a retired firefighter with the New York City Fire Department ("FDNY"), seeks judicial review of a determination by respondent the Board of Trustees of the FDNY, Article I-B Pension Fund ("Board of Trustees"), that denied his application for Accident Disability Retirement ("ADR") and instead granted him Ordinary Disability Retirement ("ODR") benefits. Respondents oppose the petition. For the reasons that follow, the petition is denied.

I. Background

On July 1, 1998, petitioner was appointed to the New York City Police Department (“NYPD”). While a member of the NYPD, petitioner was a first responder to the September 11, 2001 attacks on the World Trade Center (“WTC”). In his petition, petitioner alleges that he was exposed to harmful particulate matter and contaminants which caused him to be diagnosed with chronic lung disease, chronic sinus disease, and chronic reflux disease/Barrett’s esophagus.

On May 5, 2002, petitioner was appointed as a member of the FDNY. During his employment with the FDNY, petitioner suffered line-of-duty injuries to his right knee on June 11, 2007, October 19, 2008, September 4, 2009, October 30, 2009, November 4, 2009, April 4, 2011, September 12, 2011, March 13, 2013, and August 7, 2019. Following each of these line-of-duty injuries the petitioner was medically cleared and able to return to full duty.

On April 24, 2021, the petitioner again injured his right knee when he slipped and fell after stepping into a large hole covered by debris while walking down a steep hill. On July 26, 2022, the FDNY Bureau of Health Services (“BHS”) Medical Committee issued a report that stated the following:

MRI in April 2021 of the knee revealed medial meniscus tear with extrusion of the body of the meniscus; cartilage loss medial compartment; patellofemoral chondromalacia. Firefighter McEneaney was treated conservatively with physical therapy. He had prior injuries to the right knee in 2007, 2008, 2009, 2011, and 2019. He failed conservative treatment and underwent a right total knee replacement, on December 7, 2021, by Dr. Jerabek. Postoperatively, he had physical therapy. Dr. Jerabek's report from July 2022 recommends no full duty.

The BHS report concluded that “Firefighter McEneaney is unfit for full firefighting duties. He has a partial permanent disability. The Three Physician Board recommends limited service status.” Based on this BHS opinion, the Fire Commissioner’s Office submitted applications for ADR and ODR on petitioner’s behalf.

On November 23, 2022, the Fire Pension Fund Medical Board (the “Medical Board”) issued its recommendation on petitioner’s orthopedic application for ADR benefits based on petitioner’s medical records and an interview with petitioner. The Medical Board unanimously concluded that petitioner “is permanently disabled due to his right knee, which precludes him from full firefighting duties. His disability is causally related to end-stage Chronic Degenerative Joint Disease and not to either acute injury or exacerbation of an old injury” and recommended ODR benefits.

On September 20, 2023, the BHS issued a report which discussed petitioner’s chronic lung disease, chronic sinus disease, and chronic reflux disease/Barrett’s esophagus. The report concluded that petitioner “is unfit for full firefighting duty. He has a partial permanent disability... [petitioner] should continue on his current medication regimen and should also continue to avoid all irritants, including smoke. He should not be full duty as per the 1582 guidelines.” Based on this BHS opinion, the Fire Commissioner’s Office submitted an application on petitioner’s behalf for ADR benefits via a WTC disability application.

On December 5, 2023, the Medical Board issued its recommendation on petitioner’s WTC application, stemming from his chronic reflux disease and Barrett’s esophagus, based on petitioner’s medical records and an interview with petitioner. The Medical Board unanimously concluded that petitioner “is not permanently disabled due to [gastroesophageal reflux disease (“GERD”)] or Barrett’s esophagus. We acknowledged that he has a diagnosis of Barrett’s esophagus... In addition, we acknowledged he has symptoms of GERD. However, his symptoms are controlled with dietary and lifestyle modification the current dose of omeprazole” and recommended his application be denied.

On December 6, 2023, the Medical Board again reviewed petitioner's application for orthopedic ADR benefits after submission of two additional records dated 3/28/2023 and 1/31/2023. The Medical Board concluded that the additional documents submitted did not provide sufficient evidence that petitioner was disabled as a result of his prior injuries and reaffirmed their recommendation to deny ADR benefits and grant ODR benefits.

On December 7, 2023, the Medical Board issued its recommendation on petitioner's WTC application, stemming from his chronic sinusitis, chronic lung disease, vocal cord polyp, and chronic pulmonary disease, based on petitioner's medical records and an interview with petitioner. The Medical Board unanimously concluded that petitioner is not permanently disabled from any of these conditions as petitioner "has only required four courses of antibiotic, over an eight year period, for acute sinus disease. Pulmonary function studies supplied do not indicate that the member suffers from significant airway disease" and recommended his application be denied.

On February 28, 2024, the Board of Trustees denied petitioner ADR benefits and granted ODR benefits.

II. Discission

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after *quasi-judicial* hearings required by statute or law" (*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]) (emphasis removed); see also *Matter of Colton v. Berman*, 21 NY2d 322, 329 (1967).

“Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell*, 34 NY2d at 231; see also *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]; *Matter of Ferrelli v State of New York*, 226 AD3d 504, 504 [1st Dept 2024]). If the agency determination is supported by a rational basis, it must be upheld even if a different conclusion could have been reached by the court (*Matter of Ferrelli*, 226 AD3d at 504; see also *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]).

The Medical Board's determination should be upheld where it is supported by credible evidence and is not lacking a rational basis or arbitrary and capricious (see *Mungiguerra v Nigro*, 234 AD3d 576, 577 [1st Dept 2025]; *Matter of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d 756, 760 [1996]). The court must defer to the expertise of the Medical Board even when there is “some minimal conflicting evidence” (*Matter of Creegan v Board of Trustees of N.Y. City Police Pension Fund Art. II*, 7 AD3d 335 [1st Dept 2004]).

A. Orthopedic Claim

Petitioner argues that the Medical Board's determination that petitioner's disability is not causally related to the previous injuries to his right knee is not based on credible evidence.

Petitioner relies primarily on the *Matter of Tobin v Steisel*, where the Court of Appeals found that “an accident which precipitates the development of a latent condition or aggravates a preexisting condition is a cause of disability” is a cause of disability qualifying for ADR benefits (64 NY2d 254, 255 [1985]). The instant action is distinguishable from *Tobin*. The Medical Board specifically found that “no medical evidence included either in the original records or in the new notes confirming injury led to total knee replacement.”

To support their determination that the injury was a result of Chronic Degenerative Joint Disease, the Medical Board cited a 2007 x-ray, an MRI taken on April 14, 2011, and a CT scan and x-ray taken on August 8, 2019. The 2007 x-ray showed “degenerative joint changes”, the 2011 MRI showed “Osteoarthritis with Baker's cyst and small effusion” and the 2019 CT scan and x-ray showed “tri-compartment Osteoarthritis”. The Medical Board also referenced the April 30, 2021 MRI, taken after petitioner’s most recent injury, and noted that it revealed a “degenerative tear of the Medial Meniscus, tricompartment end-stage osteoarthritis, loose bodies, and degenerative tearing of the ACL.” The evidence of degeneration cited by the Medical Board from petitioner’s medical records provides a rational basis for their determination (*see Mungiguerra*, 234 AD3d at 577).

Petitioner’s argument that his left knee is asymptomatic and that “petitioner’s treating doctors agree that his disabling knee condition was posttraumatic in origin” is not sufficient to determine as a matter of law that the injury suffered by petitioner was the result of an acute injury or exacerbation of an old injury (*see Matter of Lamar v Nigro*, 223 AD3d 470 [1st Dept 2024], *lv denied*, 42 NY3d 909 [2024]). Therefore, the Medical Board’s determination must be upheld.

B. World Trade Center Claim

In order to qualify for ADR under the under Administrative Code § 13- 252.1, the individual must show (1) they are disabled from the performance of police duty by a documented and qualifying physical condition and (2) establish either that they were present at a qualifying site during the first 48 hours or participated in WTC rescue, recovery, or cleanup operations for a minimum of 40 hours between September 11, 2001 and September 12, 2002. A qualifying physical condition must be a “qualifying condition or impairment of health resulting in disability” (Retirement and Social Security Law (“RSSL”) § 2 [36] [a]).

Petitioner argues that the Medical Board's determination that he was not permanently disabled due to the health impairments he suffered due to his presence at the WTC after the September 11, 2001 attack is irrational and not supported by credible evidence. Petitioner further argues that the Medical Board failed to consider the job functions and fitness requirements of a firefighter, and that BHS found petitioner to be disabled due to the WTC related impairments.

The BHS finding that petitioner was disabled is not binding on the Medical Board, as the Medical Board is entitled to rely on their own expertise (*see Smith v Shea*, 209 AD3d 601, 602 [1st Dept 2022]). In the December 5, 2023 report, the Medical Board determined that petitioner's GERD and Barrett's esophagus were not permanently disabling as a 7/28/23 examination report made no reference to dysplasia and that his symptoms were "controlled with dietary and lifestyle modification the current dose of omeprazole." In the December 7, 2023 report, the Medical Board determined that petitioner's chronic sinusitis or chronic lung disease were not permanently disabling and stated the following:

"We acknowledge that the member has persistent symptoms, however, there is no objective medical evidence supplied to support a disability of either chronic sinusitis, vocal cord polyp or chronic lung disease. The member has only required four courses of antibiotic, over an eight year period, for acute sinus disease. Pulmonary function studies supplied do not indicate that the member suffers from significant airway disease."

Based on the foregoing, the Medical Board articulated a rational basis and cited credible evidence in both the December 5 and December 7, 2023 determinations for its decision.

Petitioner argues that he is entitled to the presumption that any qualifying WTC condition "shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident ... unless the contrary be proved by competent evidence" (RSSL § 2[36][a]; *Matter of Samadjopoulos v New York City Employees' Retirement Sys.*, 104 AD3d 551, 551 [1st Dept 2013]). However, "that presumption does not relieve an


applicant of its burden of showing a qualifying condition or impairment of health resulting in disability” (*Matter of Brassil v O’Neill*, 200 AD3d 406, 407 [1st Dept 2021] [internal quotation marks omitted]). Here, petitioner did not meet his burden of showing that his health impairment resulted in disability, and therefore is not entitled to the presumption of causation.

III. Conclusion

Based on the foregoing, it is hereby

ADJUDGED and **ORDERED** that the petition is dismissed, and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

11/5/2025		
DATE		LYNN R. KOTLER, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE