

Matter of Bridges v Whinnery
2026 NY Slip Op 31259(U)
March 25, 2026
Supreme Court, Kings County
Docket Number: Index No. 514846/2021
Judge: Heela D. Capell
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At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25th day of March, 2026.

P R E S E N T:

HON. HEELA D. CAPELL

J.S.C.

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In the Matter of DERRICK BRIDGES ,

Petitioner,

For a Judgment under Article 78
Of the Civil Practice Law and Rules

-against-

Index No.: 514846/2021

MELANIE WHINNERY, as the Executive Director of the
NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM,
THE BOARD OF TRUSTEES and THE MEDICAL BOARD
OF THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM,

Respondents.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Petition, Petition, and Exhibits Annexed _____	<u>1, 2, 3-14, 15, 21-23</u>
Answer, Affirmation, and Exhibits Annexed _____	<u>24, 25-30, 31</u>
Memorandum in Reply _____	<u>32</u>
Other Papers: _____	_____

Upon the foregoing papers, petitioner Derrick Bridges (petitioner), pursuant to Article 78 of the Civil Practice Law and Rules (CPLR article 78), seeks: (a) the review and annulment of the action of respondents the New York City Employees' Retirement System (NYCERS), the Board of Trustees of NYCERS (the Board of Trustees), and the

Medical Board of NYCERS (the Medical Board) (collectively, respondents) in denying the petitioner a Uniformed Sanitation 3/4 Accidental Disability Pension pursuant to the World Trade Center Disability Law (Retirement and Social Security Law [RSSL] § 605-b), and declaring said action to be arbitrary, capricious, unreasonable and unlawful; (b) directing and ordering the respondents to retire petitioner with a Uniformed Sanitation 3/4 Accidental Disability pension retroactive to his last day on the New York City Department of Sanitation payroll; or in the alternative (c) remanding the matter to the respondents for further consideration.

Petitioner's motion is denied in its entirety, and the petition is hereby dismissed.

Background

Petitioner was appointed as a Sanitation Worker with the New York City Department of Sanitation (DSNY) on August 2, 1995, and served as such at all relevant times before filing for service retirement. During his employment, petitioner was a member of the NYCERS Pension Fund. Following the terrorist attack on the World Trade Center (WTC) on September 11, 2001, petitioner, as a uniformed member of DSNY, was assigned for multiple days to the recovery and cleanup operations related to the site. According to petitioner's filings with NYCERS, he assisted in the recovery and clean-up operations at the WTC Ground Zero site from September 15 through September 18, 2001. In his petition, petitioner alleges that, years later, on December 4, 2018, November 26, 2019, and October 26, 2020, he was evaluated by the WTC Health Program at State University of New York, Stony Brook, for WTC-related conditions. He also alleges that, beginning in January 2019, he was evaluated for sleep-disordered breathing, diagnosed

with obstructive sleep apnea, and prescribed CPAP therapy, as reflected in medical reports, sleep studies, and compliance records spanning 2019 through 2021. Petitioner further alleges that, due to various medical conditions, each time he was evaluated at the DSNY Medical Division (September 19, 2019, December 13, 2019, and January 24, 2020), he was placed on “Limited Duty-No Driving.”

On or about August 20, 2020, petitioner filed a Uniformed Sanitation 3/4 Accidental Disability Retirement (ADR) application under RSSL 605-b pursuant to the WTC Disability Law, listing conditions of obstructive sleep apnea, gastroesophageal reflux disease, prostate nodule, rare diverticulosis, ulcerative colitis, polyp of colon, gastritis, dysphagia oropharyngeal issues, and esophagitis.¹ On December 7, 2020, after interviewing and physically examining the petitioner, and after reviewing all the medical records the petitioner submitted, the Medical Board issued the following findings and conclusions:

The Medical Board finds that the documentary and clinical evidence fail to substantiate that [petitioner] is disabled from performing the duties of Sanitation Worker with the Department of Sanitation.

The Medical Board does not find evidence of disabling conditions secondary to his prostate nodule, Diverticulosis, or polyp of the colon.

The Medical Board notes that the applicant has not submitted any medical records with regards to diagnosis or treatment of Ulcerative Colitis.

Regarding his diagnoses of GERD, Gastritis, Dysphagia/Oropharyngeal and Esophagitis, the Medical

¹ NYSCEF Doc No. 10, Petition, Exhibit H, at 5.

Board notes that the member is currently under the treatment of a Gastroenterologist and has been prescribed medications, which per his Gastroenterologist are controlling his symptoms. The Medical Board notes that the applicant was unable to recall the name of the medications, which he takes for his symptoms and whether the medications help his symptoms.

Regarding his diagnosis of Obstructive Sleep Apnea, the applicant has been noted to be compliant with his prescribed CPAP treatment regimen. It is also documented that he has been using his CPAP for approximately seven hours per day and the member indicates that he has been sleeping approximately eight to nine hours with this treatment modality.²

The Medical Board recommended that petitioner's ADR application under the provisions of Section 605-b of the World Trade Center Law Presumption be denied. On March 11, 2021, the Board of Trustees adopted the recommendation of the Medical Board's denial of petitioner's application. Petitioner subsequently commenced this proceeding on June 18, 2021, for a judgment pursuant to CPLR article 78 to review and annul the action of respondents in denying petitioner's ADR application.

Discussion

“A special proceeding under CPLR article 78 is available to challenge the actions or inaction of agencies and officers of state and local government” (*Matter of Gottlieb v City of New York*, 129 AD3d 724, 725 [2d Dept 2015]). “In an article 78 proceeding challenging the disability determination, the Medical Board's finding will be sustained unless it lacks rational basis, or is arbitrary or capricious” (*Borenstein v NY City Emples.*

² NYSCEF Doc No. 11, Petition, Exhibit I, at 9.

Retirement Sys. [Matter of Borenstein], 88 NY2d 756, 760 [1996] [citations omitted]). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Aponte v Olatoye*, 30 NY3d 693, 698 [2018] [citations omitted]). If a rational basis exists for its determination, the decision of the administrative body must be sustained (see *Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]; *Matter of Clark v New York State Div. of Hous. & Community Renewal*, 193 AD3d 726, 727 [2d Dept 2021]; *Matter of Lucas v Board of Educ. of the E. Ramapo Cent. Sch. Dist.*, 188 AD3d 1065, 1067 [2d Dept 2020]). Moreover, a court “may not overturn an agency’s decision merely because it would have reached a contrary conclusion” (*Sullivan County Harness Racing Assn. v Glasser*, 30 NY2d 269, 278, 283 [1972]; see *Matter of Borenstein*, 88 NY2d at 761).

“While the Medical Board was entitled to resolve conflicts in the medical evidence and rely on its own physical examinations of the petitioner, fairness demands that all available relevant medical evidence be considered by the medical board and the board of trustees before the petitioner's claim to accident disability retirement may properly be rejected, and that the Medical Board clearly state the reasons for its recommendations” (*Hodge v New York City Employees' Ret. Sys.*, 224 AD3d 687, 689 [2d Dept 2024]; see *Matter of Kiess v Kelly*, 75 AD3d 416, 417 [1st Dept 2010]). Generally, a Medical Board’s decision regarding disability will be upheld as long as it is supported by substantial evidence and is not irrational (*Matter of Borenstein*, 88 NY2d at 760-761 [1996] [citations omitted]). “Substantial evidence has been construed in disability cases, as requiring some credible evidence” (*Matter of Singleton v New York City Employees' Retirement Sys.*, 208 AD3d 882, 883 [2d Dept 2022]; see *Matter of Borenstein*, 88 NY2d

at 760; *Matter of Gibbs v New York City Employees' Retirement Sys.*, 161 AD3d 980, 981 [2d Dept 2018]; *Matter of Hernandez v New York City Employees' Retirement Sys.*, 148 AD3d 706, 707 [2d Dept 2017]). Indeed, “[s]ome credible evidence’ strikes a proper balance between deference to the Medical Board and accountability to NYCERS members” (*Matter of Borenstein*, 88 NY2d at 761 [citations omitted]). A court may not substitute its own judgment for that of the Medical Board (*Matter of Borenstein*, 88 NY2d at 761; *see also Matter of Campbell v Board of Trustees of NY City Fire Dept., Art. 1-B Pension Fund*, 47 AD3d 926, 928 [2d Dept 2008]; *Matter of Schwarzrock v Board of Trustees of NY City Fire Dept., Art. 1-B Pension Fund*, 238 AD2d 596, 597 [2d Dept 1997], *lv denied* 91 NY2d 803 [1997]).

RSSL § 605-b, which governs accidental disability retirement for NYCERS members, states as follows:

A New York city uniformed sanitation member who, on or after the effective date of this section, is determined by NYCERS to be physically or mentally incapacitated for the performance of duty as the natural and proximate result of an accident, not caused by his or her own willful negligence, sustained in the performance of such uniformed sanitation service while actually a member of NYCERS shall be retired for accidental disability.

Petitioner primarily challenges the Medical Board’s determination that he was not disabled as a result of his obstructive sleep apnea.³ In this regard, petitioner argues that the Medical Board, in determining that petitioner is not physically disabled from performing his duties as a DSNY sanitation worker, “failed to articulate or discuss in any

³ NYSCEF Doc No. 21, Petitioner’s Memorandum of Law, at 2-4.

way, the essential functions of petitioner's former job title as a DSNY [s]anitation [w]orker."⁴

As an initial matter, the Medical Board's report noted that it reviewed the job description of a DSNY sanitation worker.⁵ With respect to the diagnosis of obstructive sleep apnea, the Medical Board considered extensive medical documentation, including treating physician reports, hospital records, and polysomnography studies spanning several years. Collectively, these records demonstrated a diagnosis of mild to moderate obstructive sleep apnea, largely unremarkable objective findings, and successful management of symptoms with CPAP therapy. The Medical Board also took into account its interview with the petitioner during which he reported that he had been compliant with his treating providers' recommendation to use a CPAP device and that he had last been seen for treatment approximately one month prior. He further indicated that he generally sleeps eight to nine hours per night, albeit occasionally less, and that his sleep had improved with CPAP use. Although petitioner reported experiencing headaches, dry eyes, and residual fatigue, the Medical Board nonetheless concluded that the evidence did not establish that his condition rendered him unable to perform his job duties. As further explained in the margins, this determination is supported by credible evidence in the record, including petitioner's reported sleep efficiency, average hours of sleep, documented improvement with CPAP therapy, his own descriptions of his symptoms,

⁴ *Id.*

⁵ NYSCEF Doc No. 27, Answer, Exhibit 22. Respondents annexed two different versions of the job description of Sanitation Worker, one marked "R 03.21.2007" and another marked "R 05.20.1998." Both were in the administrative record (NYSCEF Doc No. 24, Answer) and are substantially the same versions of DSNY sanitation worker job descriptions (*compare* NYSCEF Doc No. 27, at 46, *with* NYSCEF Doc No. 27, at 48).

and the overall severity of the condition.⁶ Accordingly, the Medical Board's determination had a rational basis and was neither arbitrary nor capricious.

Next, petitioner contends that, due to his obstructive sleep apnea diagnosis and related symptom of sleep deprivation, the DSNY Medical Division placed him on "light duty," where he was instructed to not operate DSNY vehicles or perform physical labor and directed to return to the clinic in one month.⁷ In support of this contention, petitioner submits three "Sanitation Medical Evaluation (DS400)" forms: the first reflecting that, on September 19, 2019, petitioner was placed on restricted duty through October 17, 2019, the same date he was instructed to return to the clinic; the second indicating that, on December 13, 2019, he remained on restricted duty through January 24, 2020, the date he was to be re-evaluated; and the third indicating that, on January 24, 2020, he remained on restricted duty through February 7, 2020, the date he was to be re-evaluated again.⁸ Petitioner argues that these Medical Division evaluations, together with a March 6, 2020 letter from the DSNY Medical Division advising that it was preparing and filing an

⁶ Specifically, the Medical Board noted: petitioner's sleep apnea was documented in multiple medical sources, including a September 30, 2020 report from Michael Weinstein diagnosing obstructive sleep apnea with symptoms of daytime sleepiness and severe snoring, while also indicating petitioner's compliance with treatment and that he is benefitting from such treatment; a June 8, 2019 polysomnography showed mild obstructive sleep apnea, moderate during REM sleep, with 85% sleep efficiency; a subsequent September 25, 2019 sleep study demonstrated mild to moderate obstructive sleep apnea effectively treated with CPAP at 17 cm H₂O, which petitioner tolerated well and reported improved sleep; supine REM sleep and possible alpha intrusion were also noted; medication records as of July 30, 2019 included losartan/hydrochlorothiazide, pantoprazole, and sucralfate; follow-up evaluations in 2020 reflected continued mild obstructive sleep apnea, CPAP treatment adjustments (ranging from 7 to 9 cm H₂O), and an Epworth Sleepiness Scale score of 4 (within normal range) on January 3, 2020. (NYSCEF Doc No. 11, Petition, Exhibit I, at 2-9).

⁷ NYSCEF Doc No. 7, Petition, Exhibit E, at 2-4.

⁸ NYSCEF Doc No. 7, Petition, Exhibit E, at 2-4.

application for Ordinary Disability Retirement on his behalf with NYCERS,⁹ constitutes evidence of his inability to perform the duties of a DSNY sanitation worker which the Medical Board should have considered in assessing his claimed disability.¹⁰ However, contrary to petitioner's contention, the Medical Division's evaluations and the March 6, 2020 letter were not presented to the Medical Board for review, and therefore are not part of the underlying record before this Court. It is well settled that this Court is limited by CPLR article 78 to a review of the record before respondents and to the question of whether their determination was arbitrary and capricious based upon that record (*see Seaview Ass'n of Fire Island, NY, Inc. v Town of Islip Zoning Bd. of Appeals*, 221 AD3d 717, 719 [2d Dept 2023], citing *Matter of Levine v New York State Liq. Auth.*, 23 NY2d 863, 864 1969; *see also Matter of Crews v NY City Employees' Retirement Sys.*, 79 Misc 3d 1238[A], 2023 NY Slip Op 50828[U],*4 [Sup Ct, Kings County 2023] [citations omitted], citing *Matter of Borenstein*, 88 NY2d at 761). Thus, the Court's review is confined to the evidence that was actually before the Medical Board, and it cannot consider materials submitted for the first time in this proceeding in assessing whether the determination was arbitrary and capricious. Further, the authority to determine whether petitioner is disabled rests exclusively with the Medical Board, and not with an employing agency such as the DSNY Medical Division (*see Administrative Code of City of NY* § 13-167[b]; *Vargas v New York City Employees' Ret. Sys.*, 95 AD3d 1345, 1346 [2d Dept 2012]; *Campazzi v Ward*, 181 AD2d 431, 432 [1st Dept 1992]). Petitioner has

⁹ NYSCEF Doc No. 8, Petition, Exhibit F, at 2.

¹⁰ NYSCEF Doc No. 32, Petitioner's Reply Memorandum, at 2; NYSCEF Doc No. 21, Petitioner's Memorandum of Law, at 4.

also not provided any authority in support of the proposition that the Medical Board was required to consider this evidence despite its absence from the record, nor does petitioner's assignment to "light duty" necessarily establish that he was disabled for purposes of accidental disability retirement.

Furthermore, to the extent petitioner relies on additional medical conditions beyond his obstructive sleep apnea—while primarily focusing his arguments on that diagnosis—the Court finds that the Medical Board had sufficient credible evidence for its determination as to those conditions as well. In this regard, the Medical Board noted that for the conditions of GERD, gastritis, dysphagia/oropharyngeal issues, and esophagitis, “the [petitioner] is currently under the treatment of a Gastroenterologist and has been prescribed medications, which per his Gastroenterologist are controlling his symptoms.”¹¹ The Medical Board further noted that during its interview of the petitioner, he “was unable to recall the name of the medications [for the conditions of GERD, gastritis, dysphagia/oropharyngeal issues, and esophagitis], which he takes for his symptoms and whether the medications help his symptoms.”¹² The Medical Board also cited a May 28, 2020 note from Dr. Lowy reflecting only mild weight loss, occasional epigastric discomfort unchanged from prior visits, minimal GERD, rare dysphagia, and otherwise largely unremarkable findings on examination.¹³ Additionally, the Medical Board noted that petitioner's prostate nodule was benign, his diverticulosis was rare and associated with limited symptoms, and his colon polyp resulted only in occasional

¹¹ NYSCEF Doc No. 11, Petition, Exhibit I at 9.

¹² NYSCEF Doc No. 11, Petition, Exhibit I at 9.

¹³ NYSCEF Doc No. 11, Petition, Exhibit I at 6.

abdominal pain, and concluded that the documentary and clinical evidence did not substantiate a finding that petitioner is disabled from performing the duties of a sanitation worker.¹⁴

Based upon the foregoing, the Court finds that the conclusions of the Medical Board were supported by credible evidence (*see Rosa v New York City Employees' Ret. Sys.*, 227 AD3d 810, 813 [2d Dept 2024]), and thus the determination of the Board of Trustees to adopt the Medical Board's recommendation to deny petitioner's application for ADR was neither irrational nor arbitrary and capricious.

Conclusion

Accordingly, it is hereby

ORDERED that the petition for a judgment pursuant to CPLR Article 78 and New York Retirement and Social Security Law § 605-b annulling the action of the respondents in denying petitioner a uniformed sanitation three-quarter accidental disability retirement pension is denied; and it is further

ORDERED that petition for a judgment pursuant to CPLR Article 78 directing and ordering respondents to retire petitioner with a uniformed sanitation three-quarter accidental disability retirement pension; or in the alternative directing and ordering respondents, by way of remand, to review petitioner's application for three quarter accidental disability retirement benefit is denied; and it is further

¹⁴ NYSCEF Doc No. 11, Petition, Exhibit I at 8.

ORDERED that the petition is dismissed.

All relief not specifically granted herein has been considered and is denied.

The foregoing constitutes the decision, order, and judgment of this Court.

E N T E R,



HON. HEELA D. CAPELL
J.S.C.