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| Matter of Doorley v Kelly |
| 2013 NY Slip Op 30187(U) |
| January 29, 2013 |
| Sup Ct, New York County |
| Docket Number: 103576/12 |
| Judge: Donna M. Mills |
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of the Application of
AIDAN DOORLEY,

INDEX NO. 103576/12

Petitioner,

MOTION DATE _____

-against-

MOTION SEQ. No. 001

RAYMOND KELLY, et al.,

Respondents.

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion _____

PAPERS NUMBERED

Notice of Motion/Order to Show Cause- Affidavits _____

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: YES NO

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 1/29/13

Donna M. Mills
J.S.C.

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X
In the Matter of the Application of
AIDAN DOORLEY,

Petitioner,

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

-against-

Index No. 103576/12

RAYMOND KELLY, as the Police Commissioner of
the City Of New York, and as Chairman of the Board of
Trustees of the Police Pension Fund, Article II,

Respondents.

-----X

DONNA M. MILLS, J.:

In this Article 78 proceeding, petitioner Aidan Doorley, a former Police Officer in the Uniformed Force of the New York City Police Department ("NYPD"), seeks a judgment reviewing and annulling the determination of respondents Raymond Kelly, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees of the Police Pension Fund and the Board of Trustees of the Police Pension Fund, Article II ("the Board of Trustees"), which denied him accident disability retirement, ("ADR") allowance pursuant to § 13-252 of the Administrative Code of the City of New York ("Administrative Code").

Petitioner asks this Court to declare the aforementioned action to be arbitrary, capricious, unreasonable and unlawful and directing and ordering the respondents to retire petitioner with an ADR allowance retroactive to the date of his ODR; or in the alternative, remanding the matter to respondents for further consideration.

The relevant facts are as follows. On August 30, 1993, petitioner was appointed

to the uniform force of the NYPD and became a member of the Police Pension Fund ("PPF"). On June 7, 2004, petitioner sustained line-of-duty injuries to his head, face, right eye, neck and back when he was hit under the eye with a metal rod protruding from an errant cart at a construction site. Immediately after the accident, petitioner was transported to St. Luke's-Roosevelt Hospital Center emergency room where he complained of right eye pain, blurry vision and laceration. He was diagnosed with a superficial eye injury, specifically, an abrasion and swelling of the right inner eyelid. A CT scan was negative. He was treated with ibuprofen and released that same day with an appointment in two days at the hospital's eye clinic and instructions to return to the emergency room if he experienced severe pain or decreased vision and to take Tylenol for pain.

On August 31, 2005, petitioner filed an application for ADR pursuant to the Administrative Code based on his physical impairments. As is customary, the Police Commissioner filed an ODR application on petitioner's behalf. The PPF Medical Board ("Medical Board") interviewed and examined petitioner pursuant to these applications, and disapproved both disability applications finding that petitioner was fit to perform full duty. The Board of Trustees denied this application on July 14, 2006.

The petitioner also filed an ADR application based on psychological grounds based on the same June 7, 2004 accident. The Police Commissioner filed an ODR application based on petitioner's psychological impairment on the petitioner's behalf. The Medical Board approved the application for ODR and denied petitioner's ADR application.

On January 11, 2007, petitioner filed a new ADR application based on his

physical impairments. Again, the Police Commissioner filed an ODR application on petitioner's behalf. The Board of Trustees noted the denial of petitioner's applications on February 11, 2009. Petitioner instituted a timely proceeding pursuant to CPLR Article 78 to annul respondents' determination.

On March 19, 2010, Justice O. Peter Sherwood of the New York County Supreme Court granted petitioner a remand of his ADR application and the case was sent back to the Medical Board to conduct a further evaluation of petitioner's application for ADR and ODR and to then issue an expanded determination on the subject applications. In accordance with Justice Sherwood's directions, the Board of Trustees, at its April 14, 2010 meeting, remanded the petitioner's case back to the Medical Board for further review.

On June 22, 2010, after reviewing the medical records, as well as interviewing and physically examining the petitioner, the Medical Board found a lack of objective and neurological findings. Based on its findings, the Medical Board recommended disapproval of the petitioner's application for ADR and the Police Commissioner's application for ODR on the petitioner's behalf.

On October 13, 2010, after tabling the petitioner's case on September 8, 2010, the Board of Trustees voted to remand the petitioner's ADR application back to the Medical Board for further review based on new evidence.

On May 10, 2011, the Medical Board deferred its decision pending a complete neurological evaluation by Dr. Anthony Maniscalco, a NYPD District Surgeon for complete neurological evaluation.

On July 26, 2011, after reviewing the medical records, which included a report

from Dr. Daniel Kuhn, a psychiatrist, claiming a causal relationship between the patient's cognitive dysfunction and traumatic brain injury, the Medical Board again deferred its decision so that it could confer with a Board psychiatrist regarding Dr. Kuhn's report.

On December 13, 2011, based on its review of the medical records and interview of the petitioner, the Medical Board recommended disapproval of the petitioner's application for ADR and the Police Commissioner's application for ODR on the petitioner's behalf. The Medical Board found that the previous documentary evidence and the new evidence submitted did not alter its previous decision recommending disapproval of the petitioner's own application and disapproval of the Police Commissioner's application.

At its May 9, 2012 meeting, after tabling the petitioner's case on March 14, 2012 and April 11, 2012 and after discussion, the Board of Trustees denied the request for another remand and voted to deny the petitioner's application for ADR and the Police Commissioner's application for ODR based on the Medical Board's recommendation. Petitioner now challenges this new determination.

Respondents seek dismissal of the petition on the grounds that the petitioner has failed to meet his burden of showing that he is physically incapacitated for the performance of city service as the natural and proximate result of an accidental injury received in such city service, pursuant to Administrative Code § 13-252, and that, therefore, respondents did act reasonably, lawfully and properly in denying petitioner ADR.

The qualifications for ADR and ODR for police officers are set forth in New York

City Administrative Code § 13-252 and 13-251, respectively. The statutory scheme entitles a police officer to ADR if she is "physically or mentally incapacitated for the performance of city service as a natural and proximate result of an accidental injury received in such city-service ... and that such disability was not the result of willful negligence...." Code § 13-252. For an officer to become entitled to ADR, the Trustees must determine not only that she was unfit for duty and was injured in a line-of-duty accident, but also that such accident proximately caused the disability. Drayson v. Board, 37 A.D.2d 378, 380 (1st Dept. 1971). Although the Trustees make this determination, they rely on the Medical Board's recommendations to determine all medical issues.

The Medical Board is the sole arbiter of whether the applicant is injured and whether this disability prevents the applicant from performing his or her duties. If the applicant is deemed to be disabled, the Medical Board makes a recommendation to the Board of Trustees whether the disability was the result of a natural and proximate line-of-duty accident. "If the Medical Board certifies that the applicant is not medically disabled for duty, the Board of Trustees must accept that determination and deny applicant's claim" (Matter of Borenstein v. New York City Employees' Retirement Sys., 88 N.Y.2d 756, 760 [1996]). The issue of causality is reached only if the Medical Board finds the applicant is disabled (see id.).

In the usual Article 78 proceeding, the review of the Board's decision is limited to whether their decision was supported by "some credible evidence" and was not arbitrary and capricious (Drayson, 37 AD2d at 380; see also Borenstein, 88 N.Y.2d at 760). This standard is set as courts cannot "weigh the medical evidence or substitute their

own judgment for that of the Medical Board” (Borenstein, supra at 761 (citing Brady v. City of New York, 22 N.Y.2d 601; Appleby v. Herkommer, 165 A.D.2d 727 (1st Dept.1990)). Ordinarily, the decision of the Trustees as to the cause of an officer's disability “will not be disturbed unless its factual findings are not supported by substantial evidence or its final determination and ruling is arbitrary and capricious” (Matter of Canfora v. Board of Trustees of Police Pension Fund of Police Dept. of City of NY, Art II, 60 N.Y.2d 347, 351 [1983]). Thus, the Court may not set aside the denial of ADR unless the Court can conclude as a matter of law that disability was the natural and proximate result of a service-related accident. No such conclusion can be drawn here.

Here, contrary to Petitioner's argument, the Medical Board's conclusion that petitioner is not physically incapacitated to perform full-duty police work is supported by credible evidence. As long as some credible evidence exists that the officer is fit to return to duty, then the finding of the Medical Board is not arbitrary or capricious (see Borenstein, 88 N.Y.2d at 756). With respect to petitioner, respondents have established that the determination of the Medical Board was based on review of medical records, as well as the various physical examinations and interviews conducted which showed that he was fit to return to duty. Although some of the medical evidence showed that the petitioner suffered from an orthopedic or neurological condition, whether or not this condition was disabling is solely the decision of the Medical Board. While some of petitioner's doctors expressed an opinion that differed from that of the Medical Board, a difference of opinion does not make the Medical Board's determination arbitrary or capricious (see In re Cammarota v Teachers' Retirement Sys., 205 AD2d 412, 412 [1st


Dept 1984]). Moreover, as the Medical Board's finding was, as described above, clearly reasonable, the Board of Trustees' conclusion on this issue is neither arbitrary nor capricious.

Petitioner's argument that respondent's created a conflict of interest by consulting with a psychiatrist that was previously Chairman of the Medical Board which denied petitioner's ADR application for psychological disability and approved the Police Commissioner's ODR application is baseless. Therefore, this Court finds that it was neither irrational nor an error of law for the respondents to deny petitioner ADR.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: 1/29/13

ENTER:


J.S.C.

DONNA M. MILLS, J.S.C.