

Matter of Hawkins v New York City Police Dept.

2013 NY Slip Op 33265(U)

December 17, 2013

Supreme Court, New York County

Docket Number: 100740/13

Judge: Jr., Alexander W. Hunter

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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

Index Number : 100740/2013

HAWKINS, PETER

vs

N.Y.P.D.

Sequence Number : 001

ARTICLE 78

PART 33

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 30, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-10

Answering Affidavits — Exhibits _____ | No(s). 11-27

Replying Affidavits _____ | No(s). 28-30

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

*decided in accordance with the Decision
and Judgment annexed hereto.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

DEC 20 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 12/17/13

Alexander W. Hunter Jr., J.S.C.
ALEXANDER W. HUNTER JR

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X

In the Matter of the Application of
Peter Hawkins,

Index No.: 100740/13

Petitioner,

Decision and Judgment

-against-

New York City Police Department, New York City
Civil Service Commission and New York City
Department of Citywide Administrative Services,

FILED

DEC 20 2013

Respondents.

COUNTY CLERK'S OFFICE
NEW YORK

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HON. ALEXANDER W. HUNTER, JR.

The application of petitioner for an order pursuant to C.P.L.R. Article 78, annulling and reversing the January 29, 2013 final determination of respondent New York City Civil Service Commission (the "CSC") affirming the disqualification of petitioner from employment as a New York City police officer, remanding the matter for further proceedings, and awarding petitioner costs and disbursements, is denied and the proceeding is dismissed without costs and disbursements to either party. The motion by respondents to dismiss the petition is granted.

Petitioner Peter Hawkins was a candidate for the civil service title of police officer, exam no. 8322, list no. 554. As part of a pre-employment investigation, petitioner underwent a physical examination performed by respondent New York City Police Department ("NYPD"). Petitioner revealed that he was previously diagnosed with an extra heartbeat. An EKG was administered that resulted in abnormal results. Petitioner was placed on medical review and directed to produce any pertinent medical records regarding his cardiac condition prior to his next examination.

Petitioner was subsequently evaluated by NYPD cardiologist Dr. Berkowitz, at which time petitioner submitted additional medical documentation. Petitioner submitted a photocopy of: (1) a holter monitor report that confirmed the presence of "occasional isolated ventricular premature beats, however [the] arrhythmia was prevalent through the entire [twenty-four] hour period;" (2) the result of a stress test study that indicated "frequent ventricular ectopy;" (3) the results of two EKG studies that indicated "[m]oderately reduced global left ventricular function," "moderate diastolic dysfunction with elevated left ventricular filling pressures," and "moderate prolapse of both leaflets of the mitral valve;" (4) handwritten progress reports; and (5) a narrative report from Dr. Stephen Vlay. Based on the review of medical records of petitioner and a physical examination of petitioner, Dr. Berkowitz recommended that petitioner be disqualified from further consideration as a police officer.

By Notice of Medical Disqualification dated January 6, 2012, petitioner was disqualified from employment as a police officer. The stated basis for disqualification was cardiomyopathy.

Petitioner appealed the disqualification to the CSC and submitted medical documentation in support of his appeal. Petitioner submitted an opinion letter from Dr. Vlay who opined that petitioner “has excellent exercise performance” and that petitioner would be able to perform the duties of a police officer. Dr. Vlay further opined that petitioner is New York Heart Association functional class I, by which there is no limitation of physical activity and ordinary activity does not cause undue fatigue, palpitations, or shortness of breath. Dr. Rakesh Patel provided a second opinion that indicated petitioner could engage in a moderate intensity exercise program.

In opposition, NYPD submitted a letter from its supervising chief surgeon, Dr. Eli J. Kleinman who opined that applicants with cardiomyopathy “cannot be expected to safely perform the essential duties of police officer, as [the] nature of their condition can pose a serious threat to themselves and the public.” Dr. Kleinman requested that CSC affirm the medical disqualification of petitioner.

CSC conducted a hearing on January 16, 2013. CSC considered the arguments and testimony of both parties, and based on its review, concluded that the record supported the medical disqualification of petitioner. By Notice of Civil Service Commission Action, Item No. C13-0086 A, dated January 29, 2013, the CSC affirmed the decision of NYPD to medically disqualify petitioner from employment as an NYPD police officer (the “January 29, 2013 final determination”).

Petitioner avers that the employment disqualification was unreasonable, arbitrary, and capricious, and violated the Civil Service Law and Executive Law.

In opposition, respondents move to dismiss the petition in its entirety on the grounds that: (1) the petition fails to state a cause of action; (2) the actions of respondents were rational; (3) petitioner failed to show that the CSC abused its discretion; and (4) petitioner failed to show that respondents violated Executive Law § 296.

In reply, petitioner maintains that the determination was unreasonable, arbitrary, and capricious.

A court may not disturb an administrative decision unless the action of an agency was arbitrary and capricious, was in violation of lawful procedures, or was made in excess of its jurisdiction. **Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974)**. A court “may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion.” **Id. at 232**. An arbitrary action is one “without sound basis in reason” and without regard to the facts. **Id.**

In determining the fitness of candidates for civil service employment, an agency is afforded wide discretion, which “is to be sustained unless it has been clearly abused.” **City of New York v. New York City Civ. Serv. Comm.**, 20 A.D.3d 347, 348 (1st Dept. 2005); **Smith v. City of New York**, 228 A.D.2d 381, 383 (1st Dept. 1996). A determination of the Civil Service Commission is rational and must be upheld so long as it is based on evidence in the record. See **City of New York v. O’Connor**, 9 A.D.3d 328 (1st Dept. 2004); **City of New York v. New York City Civ. Serv. Comm.**, 12 A.D.3d 172 (1st Dept. 2004). “In determining whether a candidate is medically qualified to serve as a police officer, the appointing authority is entitled to rely upon the findings of its own medical personnel, even if those findings are contrary to those of professionals retained by the candidate....” **Matter of City of New York v. New York City Civ. Serv. Comm.**, 61 A.D.3d 584, 584-585 (1st Dept. 2009).

In the instant proceeding, the CSC relied on evidence in the record to support the medical disqualification of petitioner. The determination followed an extensive review and appeal process in which copious documentation was submitted by petitioner and petitioner was examined by both private and NYPD physicians. The disqualification rested on the documented history of petitioner having cardiovascular disease. This court finds that the determination of CSC was neither arbitrary nor capricious because, the CSC relied on the medical records submitted by petitioner and the informed medical opinion of NYPD supervising chief surgeon Dr. Kleinman who opined that candidates with cardiomyopathy cannot be expected to safely perform the essential duties of a police officer. Accordingly, the January 29, 2013 final determination is sustained on review.

Under Executive Law § 292 (21), a disability is defined as “(a) a physical, mental or medical impairment...which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment...” In dealing with employment matters, the term disability shall be limited to disabilities which, “upon the provisions of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.” **Executive Law § 292 (21)**. Thus, a person whose condition prohibits him from performing employment duties in a reasonable manner is not considered disabled under the statute. See **O’Hare v. New York City Police Dept.**, 161 A.D.2d 487 (1st Dept. 1990).

Here, the record demonstrates that the cardiovascular disease of petitioner does not fall within the definition of the term “disability” as contemplated by Executive Law § 292 (21). The heart condition of petitioner coupled with the risks and stress imposed by the responsibilities and duties of being a police officer, poses a serious threat to his ability to reasonably and safely perform the essential functions of a police officer. The conclusions of NYPD were not based on mere speculation or upon the existence of an asymptomatic disorder, but were based on a careful review of the medical records of petitioner. The conclusions constitute individualized findings that petitioner suffers from a heart condition that prevents him from performing in a reasonable manner the particular activities involved in employment as a police officer. See **McCarthy v.**

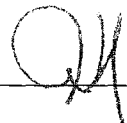
Nassau County, 208 A.D.2d 810, 811-812 (2nd Dept. 1994). Accordingly, the medical disqualification of petitioner did not constitute an unlawful discrimination by respondents.

Accordingly, it is hereby

ADJUDGED, that the application of petitioner for an order pursuant to C.P.L.R. Article 78, annulling and reversing the January 29, 2013 final determination affirming the disqualification of petitioner from employment as a New York City police officer, remanding the matter for further proceedings, and awarding petitioner costs and disbursements, is denied and the proceeding is dismissed without costs and disbursements to either party. The motion by respondents to dismiss the petition is granted.

Dated: December 17, 2013

ENTER:



J.S.C.

ALEXANDER W. HUNTER JR

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