

Matter of Rodgers v O'Neill

2018 NY Slip Op 30028(U)

January 8, 2018

Supreme Court, New York County

Docket Number: 155989/2017

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : PART 32

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In the Matter of the Application of
 SEAN RODGERS,

Petitioner,

Index No. 155989/2017
 Motion Seq: 001

-against-

DECISION, ORDER & JUDGMENT
 ARLENE P. BLUTH, JSC

JAMES P. O'NEILL, as Police Commissioner of the
 City of New York, and as Chairman of the Board
 of Trustees of the Police Pension Fund, Article II, KEVIN
 HOLLORAN, as Executive Director of the New York
 City Police Pension Fund, THE BOARD OF TRUSTEES
 of the Police Pension Fund, Article II, and the CITY
 OF NEW YORK,

Respondents.

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The petition to annul a determination by respondents denying petitioner's application for accident disability retirement (ADR) is denied and this proceeding is dismissed.

Background

This proceeding arises out of petitioner's employment as a police officer for the NYPD. Petitioner began working for the force in August 1993 and eventually attained the rank of Lieutenant. Petitioner claims that he is entitled to ADR due to injuries that occurred in the line of duty on July 27, 2011. On that day, petitioner was assisting in an arrest when he injured his left thumb and hand while trying to place a handcuff on a suspect. Petitioner claims that he continues to suffer from reduced left hand strength and treatment has been unsuccessful in fixing his condition.

In 2013, an ADR application was filed on his behalf by the police commissioner. The Medical Board of the Police Pension Fund ("Medical Board") examined petitioner three separate

times. The Medical Board initially concluded that petitioner was not disabled, but later found (after the second and third reviews) that petitioner was disabled. However, this finding of disability was based on petitioner being diagnosed with multiple sclerosis (“MS”). At the time of the first Medical Board review, petitioner had not yet been diagnosed with MS. On March 8, 2017, the Board of Trustees (“Board”) adopted the Medical Board’s finding that petitioner was disabled because of his MS and not from injuries to his left hand and thumb sustained on July 27, 2011.

Petitioner claims that the denial of his request for ADR was arbitrary and capricious because petitioner’s physicians concluded that he faced serious complications from the July 27, 2011 injury. Petitioner also claims that his doctors found carpal tunnel syndrome and left ulnar nerve neuropathy in his left hand. Petitioner complains that the Medical Board did not disclose the reason for their denial of petitioner’s ADR application.

In opposition, respondents claim that petitioner failed to meet his burden to establish that he is entitled to ADR. Respondents insist that the medical evidence shows that prior to petitioner’s diagnosis of MS, he was not disabled based on the alleged left thumb injury in 2011. Respondent emphasize that after three reviews of petitioner’s ADR application by the Medical Board, another remand to respondents is unnecessary.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination

has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

“Applying for ADR involves a two step process. Initially, the pension fund’s Medical Board conducts a physical examination, interviews the applicant, and reviews the submitted evidence, before submitting a recommendation to the Board of Trustees. In the second step, the Board of Trustees votes to either grant or deny ADR benefits” (*Stavropoulos v Bratton*, 148 AD3d 449, 450, 50 NYS3d 2 [1st Dept 2017]).

“The Board of Trustees is entitled to rely on the Medical Board’s recommendation as to causation even in the face of conflicting evidence as long as it is based on some credible evidence” (*Bailey v Kelly*, 11 AD3d 208, 209, 782 NYS2d 263 [1st Dept 2004]).

The Medical Board, in its final determination, dated September 7, 2016, noted that an “examination on July 8, 2015 revealed that [petitioner] had several neurological deficits and weakness of both hands. He had neurological history of transverse myelitis” (NYSCEF Doc. No. 52 at 5). The Medical Board concluded that “we find that retired Lieutenant Rogers is not disabled from the contusion to his left thumb and subangual hematoma that he sustained on July 27, 2011. We find him disabled from multiple sclerosis causing systemic neurologic manifestations which is unrelated to the line of duty injury of July 27, 2011” (*id.*).

“Based on the review of the history, the medical records, the new medical evidence submitted, the clinical findings, the symptomatology and today’s evaluation, it is the finding of the Article II Medical Board that retired Lieutenant Rogers is disabled from systemic neurologic

manifestations of multiple sclerosis also involving the left hand. Therefore, the Article II Medical Board reaffirms its previous decision and recommends approval of the Police Commissioner's application for Ordinary Disability Retirement and disapproval of the Police Commissioner's application for Accident Disability Retirement" (*id.*).

This Court finds that the Medical Board's determination denying ADR and the Board's affirmation of that decision (*see* NYSCEF Doc. No. 58) is rational. The fact is that the Medical Board initially found that petitioner was not disabled from performing the duties of a police officer (NYSCEF Doc. No. 23 at 5-6). After the initial examination on May 8, 2013, the Medical Board found that petitioner's left thumb had normal range of motion and normal grip strength (NYSCEF Doc. No. 52 at 2-3). After the MS diagnosis, the Medical Board then changed its mind and found petitioner disabled, but not because of his thumb injury - it was because of his MS, and granted petitioner ODR (*see* NYSCEF Doc. No. 45). The Medical Board concluded that the weakness in both of petitioner's hands was due to petitioner's MS diagnosis (*see* NYSCEF Doc. No. 52 at 3-4).

Although petitioner disagrees with the Medical Board's conclusion that petitioner is disabled from his MS and not from the July 2011 thumb incident, petitioner failed to meet his burden to show that respondents' determination was arbitrary and capricious. Respondents were entitled to rely upon the conclusions of the Medical Board regarding what caused petitioner's disability. And the Medical Board presented a rational reason for its decision to deny petitioner's ADR application— that petitioner is disabled from his MS rather than the 2011 incident. The petition is denied in its entirety.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition to annul respondents' determination denying petitioner's application for ADR is denied, this proceeding is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision, Order and Judgment of the Court

Dated: January 8, 2018
New York, New York



ARLENE P. BLUTH, JSC