

<b>Caputo v New York City Employees' Retirement Sys.</b>
2018 NY Slip Op 32735(U)
October 2, 2018
Supreme Court, Kings County
Docket Number: 502713/2018
Judge: Reginald A. Boddie
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At I.A.S. Part 22 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York, on the 2nd day of October 2018.

PRESENT:  
Honorable Reginald A. Boddie  
Justice, Supreme Court

-----X  
CHRISTOPHER CAPUTO,

Petitioner,

Index No. 502713/2018  
Cal. No. 1

-against-

DECISION AND ORDER

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM, THE BOARD OF TRUSTEES of the New York City Employees' Retirement System, THE MEDICAL BOARD of the New York City Employees' Retirement System, and THE CITY OF NEW YORK,

Respondents.  
-----X

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Amended Verified Petition & Annexed Affirmation/Affidavits	1-2
Petitioner's Memorandum of Law	3
Verified Answer	4
Respondent's Memorandum of Law	5
Reply	6

Upon the foregoing cited papers, and after oral argument, the decision and order on the petition, pursuant to CPLR Article 78, is as follows:

Petitioner, a Sanitation Worker for the New York City Department of Sanitation since 2005, was involved in an automobile accident on August 10, 2011. Petitioner alleged significant injuries to his right knee and right shoulder. Petitioner sought a disability retirement pension

pursuant to the Retirement and Social Security Law § 605 and 605-b. On April 13, 2017, the Board of Trustees adopted the Medical Board's September 6, 2016 recommendation and denied petitioner's application. Petitioner filed another application on June 7, 2017, which was referred by the Medical Board to the Medical Unit to determine whether the evidence received with the June 5 application was sufficient to schedule petitioner for an interview examination. The Medical Unit responded it was not without providing a rationale for its conclusion. On August 30, 2017, petitioner provided additional medical documentation to support the June 7 application, but the application was erroneously closed on October 17, 2017, without consideration of this documentation. Petitioner commenced an Article 78 proceeding on February 8, 2018, which was resolved by stipulation dated June 22, 2018, wherein NYCERS' agreed to withdraw the October 17, 2017 determination and issue a new final determination of petitioner's June 7, 2017 application. On July 16, 2018, the Medical Board reviewed the evidence submitted by petitioner on August 30, 2017, determined it did not warrant further consideration, and denied petitioner's June 7 disability retirement applications. Petitioner commenced the instant Article 78 proceeding on July 30, 2018, seeking to annul the July 16 determination of the Medical Board on the grounds that the decision lacked a rationale and was therefore arbitrary and capricious.

The Medical Board determines whether a member applying for accidental disability retirement benefits is disabled (*see* Administrative Code of the City of New York § 13-167 [b]; *Matter of Vargas v New York City Employees' Retirement Sys.*, 95 AD 3d 1345, 1346 [2d Dept 2012]). The Board of Trustees is bound by the Medical Board's determination as to whether an applicant is disabled (*Matter of Vargas*, 95 AD3d at 1345 citing *Matter of Meyer v Board of Trustees of New York City Fire Dept., Art. 1-B Pension Fund*, 90 NY2d 139, 144 [1997]; *Matter*

*of Borenstein v New York City Employees' Retirement Sys.*, 88 NY2d 756, 760 [1996]; *Matter of Zamelsky v New York City Employees' Retirement System*, 5 AD3d 844, 845 [2d Dept 2008]).

The Medical Board's determination is conclusive if it is supported by substantial evidence, which in disability cases has been construed as some credible evidence, and is not irrational (*Matter of Vargas*, 95 AD3d at 1345; *Matter of Borenstein*, 88 NY2d at 760). Consequently, the court's function in an Article 78 proceeding is to determine if the determination of the administrative agency is supported by credible evidence, or is arbitrary and capricious (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230 [1974]).

Respondent averred,

The determination of sufficiency [at issue here] is specific to the disability application and depends on a variety of factors, including but not limited to, the ailments for which the disability applications are filed, the type of line of duty incidents and injuries, etc., and is based on the member of the Medical Board's review of, inter alia, the source of the medical evidence (e.g. whether it is from doctor(s) and/or experts in the relevant field), the type of medical evidence (e.g. whether it is an objective test (MRIs, X-Rays, EKG, or CT Scans) or restatement of an applicant's complaints, and the existence of any new findings and/or change, including improvement of one's condition, from previously submitted documents, etc.

In support of its position, respondent proffered the affidavit of Dr. John Daly, dated September 12, 2018, to explain his notations in the June 26, 2017 memorandum, attached as respondent's exhibit 20. Dr. Daly alleged he reviewed the medical evidence submitted through August 30, 2017, and found no new objective documentation to warrant further consideration. This memorandum formed the basis of the July 16, 2018 denial, attached as respondent's exhibit 25. However, the memorandum dated June 26, 2017, and the July 16, 2018 denial, contain conclusory denials of petitioner's application. Neither document contained a rational specific to

petitioner's application or cited any of the above mentioned factors which respondent argue formed the basis of its determination. Accordingly, the Court finds the decision of the Medical Board is arbitrary and capricious, and the application is remanded for a review de novo by the full medical board.

E N T E R:



Hon. Reginald A. Boddie  
Justice, Supreme Court