

Matter of Alvarez v New York City Empls. Retirement Sys.
2021 NY Slip Op 31888(U)
June 2, 2021
Supreme Court, Kings County
Docket Number: 524634/2020
Judge: Lillian Wan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17

Index No.: 524634/2020
Motion Date: 04/28/2021
Motion Seq.: 01

-----X

In the Matter of the Application of
DIDIER ALVAREZ,

Petitioner,

DECISION AND ORDER

- against -

NEW YORK CITY EMPLOYEES' RETIREMENT
SYSTEM,

Respondent,

- and -

For a Judgment and Order Pursuant to Article 78
of the Civil Practice Law and Rules.

-----X

The following e-filed documents, listed by NYSCEF document number 1-7, 10-24, and 26 were read on this motion seeking a judgment pursuant to Article 78 of the CPLR.

The petitioner, Didier Alvarez, has commenced this proceeding pursuant to Article 78 of the CPLR seeking a judgment/order: 1) declaring and finding that the respondent acted arbitrarily and capriciously and failed to perform a duty enjoined by law in violation of the New York State Employment Retirement Law; 2) preliminarily and permanently enjoining and restraining respondent from violating the New York State Employee Retirement Law; 3) ordering that respondent allow petitioner to resubmit his disability retirement benefit application such that it can be considered on its merits; 4) awarding petitioner attorneys' fees and costs of this action; and 5) for such other and further relief which the Court may deem just and proper. For the reasons set forth below, the petition is denied.

The petitioner was a civil service employee in the title of Computer Associate III at Woodhull Hospital, where he worked for 17 years. Respondent New York City Employees' Retirement System (hereinafter NYCERS) administers the retirement system for eligible New York City employees and has its principal place of business in Kings County. Pursuant to the New York State Retirement and Social Security Law (hereinafter RSSL), NYCERS administers both a service retirement and a disability retirement.

The petitioner states that on December 30, 2019, he was eligible for retirement benefits because he had served more than five years and was over the age of 57 (service retirement) and had an arthritic ankle that prevented him from doing the required duties of his job (disability retirement). Petitioner states that he filed a service retirement application with NYCERS on

December 30, 2019 but did not have all medical documentation required for the disability retirement application at that time. Petitioner states that the service retirement application was granted and became effective on January 22, 2020, which was Petitioner's last day on payroll.

Petitioner states that he filed his disability retirement application on January 24, 2020. Petitioner argues that this filing was timely because the last day to file this application was three months from his last day on payroll, which is consistent with RSSL § 605(b)(2)(b). However, by letter dated February 7, 2020, NYCERS asserted that the petitioner's application could not be processed because he was no longer on payroll on January 24, 2020. NYCERS further reasoned that the petitioner had already filed his service retirement application. The petitioner's administrative appeal was similarly denied by letter dated May 29, 2020 on the grounds that petitioner was "no longer a member as of the date [he] retired" and thus was "ineligible to file an application for disability retirement on January 24, 2020."

The petitioner argues that although NYCERS denied his application because he filed it after his last day, the written instructions for online disability forms (Forms 801 and 922) twice state that an applicant has three months from the last day on payroll to submit the application, and does not state that the applicant's last day is the deadline to file. Petitioner states that he requested a reconsideration of this determination but was again denied on the ground that his last day on payroll was the last day to file. As a result, the petitioner argues that NYCERS acted arbitrarily and capriciously and failed to perform a duty enjoined by law in violation of RSSL § 605 by denying his application for disability retirement benefits on the ground that it was untimely.

The respondent opposes the application, asserting that the petitioner's claims and requests for relief should be denied in their entirety because NYCERS acted in accordance with applicable law in that its rejection of the disability retirement application was rational and reasonable. Respondent states that RSSL § 605, which sets forth the applicable provisions of law governing the applications for disability retirement benefits of members of NYCERS, provides that membership in NYCERS at the time of application is a precondition to filing for disability retirement. Respondent contends that because the petitioner's last day on payroll was January 22, 2020, and he thereafter began receiving a service retirement pension, he was no longer a "member" when he filed for disability retirement. Respondent also argues that this legal requirement is set forth in NYCERS Rule 23(a), which governs all applications for disability retirement filed by members, and that because petitioner was not a member at the time that he filed his disability retirement application, he was ineligible to apply for disability retirement.

Pursuant to RSSL § 605, an "[a]pplication for a disability retirement allowance for a member may be made by: 1) Such member; or 2) The head of the department in which such member is employed." Furthermore, pursuant to CPLR § 7803, the questions that may be raised in an Article 78 proceeding include:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
...

3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed.

Pursuant to CPLR § 7803(1), “[m]andamus is available only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law,” and “does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial.” *Alltow, Inc. v Village of Wappingers Falls*, 94 AD3d 879, 880 (2d Dept 2012), quoting *New York Civil Liberties Union v State*, 4 NY3d 175 (2005). While a discretionary act involves the exercise of reasoned judgment which could typically produce different acceptable results, a ministerial act requires direct adherence to a governing rule or standard with a compulsory result. *Alltow* at 880-881.

Furthermore, under CPLR § 7803(1), the standard for judicial review as to whether an administrative agency’s determination was arbitrary and capricious or an abuse of discretion is an extremely deferential one. *Beck-Nichols v Bianco*, 20 NY3d 540 (2013). “The courts cannot interfere with an administrative tribunal’s exercise of discretion unless there is no rational basis for its exercise or the action complained of is arbitrary and capricious, a test which chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact.” *Id.* at 559 (internal quotation marks removed); see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck*, 34 NY2d 222 (1974).

Here, the petitioner has not shown that NYCERS has failed to perform a duty enjoined by law, and further failed to show that NYCERS’ decision to deny his application based on untimeliness was arbitrary and capricious or otherwise an abuse of discretion. NYCERS reasoned in its denial that, since petitioner was no longer a “member” at the time he made his disability retirement application, he was ineligible to make such an application based on a strict reading of the term as used in RSSL § 605. This Court finds that NYCERS’ reasoning in this regard did not lack a rational basis and, therefore, should remain undisturbed. See *Beck-Nichols* at 559. The petitioner’s argument that any mistake on his part came only as a result of faulty, misleading application documents is unavailing. Even if the Court may disagree with a determination, absent a finding that the determination at issue was arbitrary and capricious or represented an abuse of discretion, “a court may not substitute its judgment for that of the board or body.” *Pell* at 232, quoting *Diocese of Rochester v Planning Bd. of Town of Brighton*, 1 NY2d 508 (1956). In light of the foregoing, the petition is denied and the proceeding is dismissed.

The remaining contentions are without merit.

Accordingly, it is hereby

ORDERED, that the petition for relief pursuant to CPLR Article 78 of petitioner Didier Alvarez is DENIED in its entirety and this proceeding is dismissed.

This constitutes the decision and order of the Court.

Dated: June 2, 2021



HON. LILLIAN WAN, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020.