

**Matter of Jones v New York City Employees'  
Retirement Sys.**

2022 NY Slip Op 33452(U)

October 7, 2022

Supreme Court, New York County

Docket Number: Index No. 520531/2021

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7<sup>th</sup> day of October 2022

HONORABLE FRANCOIS A. RIVERA

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In the Matter of the Application of

DELLWOOD JONES,

Petitioner,

**DECISION, ORDER & JUDGMENT**

Index No. 520531/2021

- against -

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

Respondent,

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

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Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of petition and verified petition, filed on August 12, 2021, under motion sequence one, petitioner Dellwood Jones seeks, among other things, a judgment pursuant to CPLR Article 78 annulling the decision of the respondent New York City Employees' Retirement System to deny the petitioner's application for Accidental Disability Retirement benefits pursuant to New York Retirement and Social Security Law § 605-b.

- Notice of Petition
- Verified Petition
- Respondent's Verified Answer
- Exhibits A to T
- Respondent's Memorandum of Law
- Petitioner's Memorandum of Law in Support

## BACKGROUND

On August 12, 2021, petitioner Dellwood Jones (hereinafter Jones or petitioner) commenced the instant CPLR Article 78 proceeding against the respondent the New York City Employees' Retirement System (hereinafter NYCERS) by electronically filing a notice of petition and verified petition with the Kings County Clerk's office (hereinafter KCCO).

On February 16, 2022, NYCERS filed its verified answer with twenty-three annexed exhibits labeled A through T and a memorandum of law. NYCERS' verified answer includes six affirmative defenses.

Jones' verified petition alleges the following salient facts. On or about August 27, 2001, Jones became employed as a sanitation worker with the New York City Department of Sanitation. Due to his employment with the New York City Department of Sanitation, Jones became an active member of NYCERS.

On December 8, 2017, Jones was employed as a Sanitation Supervisor. On that day, while performing a facility check of a garage, Jones stepped into an uncovered drain and was caused to trip and fall (hereinafter the subject incident). Jones suffered injuries to his back, neck and right shoulder. Jones filed an accident report with his employer on or about December 12, 2017.

On March 15, 2019, Jones filed an application for Accidental Disability Retirement (hereinafter ADR) pursuant to Retirement and Social Security Law §§ 605-b and 605. In the ADR application, Jones alleged that the full duties of a Sanitation Supervisor could no longer be performed due to the subject incident which caused

permanent exacerbation of the petitioner's underlying preexisting cervical and lumbar spine conditions and right shoulder.

On September 12, 2019, the NYCERS Medical Board ("Medical Board") examined the petitioner. The Medical Board opined that the subject incident was not an accident. While the Medical Board found that the petitioner was permanently disabled due cervical impairment, it deferred reaching a conclusion as to the causal relation.

On November 14, 2019, after receiving medical evidence from the petitioner, the Medical Board affirmed its prior finding that the subject incident was not an accident. Furthermore, the petitioner was deemed not to be disabled due to right shoulder and lumbar impairments. The Medical Board also found that the petitioner's cervical impairment was not causally related to the subject incident.

On January 13, 2020, Jones received written notice that the Medical Board recommended the denial of the petitioner's ADR application. Petitioner was informed of the right to appeal the denial before the NYCERS Board of Trustees ("Board of Trustees"). The petitioner submitted additional medical evidence to the Board of Trustees who later remanded the matter to the Medical Board for further review.

On October 28, 2020, after examination by the Medical Board, it affirmed its prior findings that the petitioner was not disabled due to right shoulder or lumbar impairments. Rather, petitioner was disabled due to cervical impairment. Nevertheless, the Medical Board continued to conclude that the cervical impairment was not causally related to the subject incident. The petitioner opted to the contest the Medical Board's recommendation.

On April 8, 2021, at the Board of Trustees' meeting, the petitioner presented oral arguments of his contention that the subject accident was an accident under the Retirement and Social Security Law and was causally related to the Petitioner's disabling cervical condition as it permanently exacerbated his underlying condition which caused the need for cervical fusion.

On April 12, 2021, the petitioner's counsel was notified by email that the Board of Trustees adopted the recommendation of Medical Board and the petitioner's ADR application was denied. However, no official letter of the denial was sent to the petitioner until August 10, 2021, when his counsel received a copy of the letter by email.

In the instant special proceeding, Jones seeks, among other things, to review and annul the determination by NYCERS to deny the petitioner ADR benefits.

#### **MOTION PAPERS**

The petitioner's papers consist of a notice of petition and verified petition.

The NYCERS' answering papers consist of a verified answer, twenty-three annexed exhibits labeled A through T, and a memorandum of law. Exhibit A is a copy of an Application for Membership for Uniformed Sanitation Force Members signed by Dellwood Jones notarized on August 27, 2001. Exhibit B is a copy of NYCERS Agency Report on Accident. It has a date and time stamp marked "NYCERS Mail Room REC'D #3 2019 APR 10 PM 4:23." Exhibit C is a copy of a Line of Duty Injury Report dated May 14, 2015. Exhibit D is a copy of an Application for Disability Retirement Tier 4 Members, signed by Dellwood Jones on March 8, 2019. Exhibit E1 is described as Dellwood Jones Medical Records pages 1 to 365. Exhibit E2 is described as Dellwood

Jones Medical Records pages 366 to 679. Exhibit E3 is described as Dellwood Jones Medical Records pages 680 to 941. Exhibit F is copy of a letter from NYCERS to the Petitioner dated August 7, 2019. Exhibit G is described as Medical Board Reports. Exhibit H is a copy of Code No. 70150, Sanitation Supervisor Job description. Exhibit I is described as additional Medical Records. Exhibit J is a copy of a letter from NYCERS to the petitioner dated October 13, 2022. Exhibit K is a copy of a letter from NYCERS to the petitioner dated December 2, 2022. Exhibit L is a copy of a letter from NYCERS to the petitioner dated March 11, 2021. Exhibit M is a copy of the NYCERS Board of Trustees Regular Meeting Transcript from April 8, 2021. Exhibit N is described as the NYCERS Board Resolution from April 8, 2021. Exhibit O is a copy of a letter from NYCERS to the petitioner dated August 12, 2021. Exhibit P1 is described as a Miscellaneous Administrative Records from pages 1-104. Exhibit P2 is described as a Miscellaneous Administrative Records from pages 105-186. Exhibit Q is is a copy of a letter from NYCERS to the petitioner dated October 15, 2019, requesting additional medical evidence. Exhibit R is a copy of a letter from NYCERS to the petitioner dated December 4, 2019. Exhibit S is a copy of a letter from NYCERS to the petitioner dated January 8, 2020. Exhibit T is a copy of a letter from NYCERS to the petitioner dated May 19, 2019, requesting additional medical evidence.

The petitioner's reply papers consist of a memorandum of law.

## LAW AND APPLICATION

In the instant CPLR Article 78 proceeding, Jones, a retired employee of the New York City Department of Sanitation, seeks a judgment from this Court, (1) annulling the

respondent's determination of April 8, 2021, denying petitioner ADR benefits; (2) awarding petitioner ADR benefits; or (3) remanding the matter back to NYCERS for additional consideration.

Jones contends that NYCERS final determination to deny him ADR benefits was arbitrary, capricious, and an error of law.

Petitioner filed an application with NYCERS on March 8, 2019, for Ordinary Disability Retirement and Uniformed Sanitation  $\frac{3}{4}$  Accidental Disability Retirement pursuant to Retirement and Social Security Law § 605-b. The claim was based on an incident that occurred on December 8, 2017, where Jones allegedly stepped into an uncovered drain and was caused to trip and fall.

The Medical Board interviewed and examined the petitioner. It also reviewed the medical evidence the petitioner submitted on at least three separate occasions. The Medical Board determined that the petitioner was disabled from performing the duties of sanitation supervisor and entitled to Ordinary Disability Retirement. However, the Medical Board determined that Jones failed to establish that the December 8, 2017, incident permanently aggravated a preexisting condition which resulted in his disability. The Medical Board concluded that the petitioner had preexisting complaints regarding cervical spine pain due to a prior accident in 2015. The Medical Board also compared MRI reports of the cervical spine after the accident in 2015 and after the December 8, 2017, incident. The Medical Board found that the MRIs showed no new acute injury to the cervical spine after December 2017.

Generally, in a proceeding pursuant to CPLR Article 78, judicial review of factual findings made by an administrative agency following an evidentiary hearing is limited to consideration of whether the findings are supported by substantial evidence (*Sekul v City of Poughkeepsie*, 195 AD3d 622, 624 [2nd Dept 2021], citing CPLR 7803[4]; *Matter of Haug v State Univ. of N.Y. at Potsdam*, 32 NY3d 1044, 1045 [2018]). Where substantial evidence exists, the reviewing court may not substitute its judgment for that of the agency, even if the court would have decided the matter differently (*Matter of Haug*, 32 NY3d at 1046). Moreover, the court must only ascertain whether there is a rational basis for the determination or whether it is arbitrary and capricious (*Halloran v NYC Employees' Retirement Sys.*, 172 AD3d 715, 716-17 [2nd Dept 2019], citing *Flacke v. Onondaga Landfill Sys.*, 69 NY2d 355, 363 [1987]).

In the context of an Article 78 challenge to a disability determination, the applicant for accident disability retirement has the burden of establishing that the disability is causally connected to a line-of-duty accident (*Halloran*, 172 AD3d 715, 716 citing *Matter of Doorley v Kelly*, 106 AD3d 554, 554 [1st Dept 2013]). In determining the question of causal connection, the test is the existence of some credible evidence to support the findings of the agency denying the application (*Halloran*, 172 AD3d at 716, citing *Matter of Drayson v Board of Trustees of Police Pension Fund of City of N.Y.*, 37 AD2d 378, 380 [1st Dept 1971]). The agency's determination can be set aside upon judicial review only if it can be determined on the record as a matter of law that the disability was the natural and proximate result of a service-related accident (*Halloran*, 172 AD3d at 716, citing Retirement and Social Security Law § 605-b[b][1]). A line-of-



duty accident is considered the natural and proximate cause of a petitioner's disability if the accident "either precipitated the development of a latent condition or aggravated a preexisting condition.... [w]here the medical evidence with respect to causation is equivocal, the burden has not been sustained" (Halloran, 172 AD3d at 716, quoting *Matter of Kmiotek v Board of Trustees of N.Y. City Fire Dep., Art. 1-B Pension Fund*, 232 AD2d 640, 641 [2nd Dept 1996]).

The Medical Board determines whether a member applying for accidental disability retirement benefits is disabled (*see* Administrative Code of City of NY § 13-167[b]; *Vargas v New York City Employees' Ret. Sys.*, 95 AD3d 1345, 1346 [2nd Dept 2012]). The Board of Trustees is bound by a Medical Board finding that the applicant is disabled (*id.*). In cases where the Medical Board finds that the applicant is disabled, the Medical Board must further determine the causation of the disability, and make a recommendation to the Board of Trustees, which has the ultimate authority to determine causation (*see Matter of Borenstein v New York City Employees' Retirement System*, 88 N.Y.2d 756 at 760-61 [1976]). The Board of Trustees must then make its own evaluation as to the Medical Board's recommendation regarding causation (*see Meyer v Bd. of Trs. of the New York City Fire Dep't, Art. 1-B Pension Fund*, 90 NY2d 139, 145-46 (1997); *Suppan v New York City Employees' Ret. Sys.*, 37 A.D.3d 474, 475 [2nd Dept 2007]).

Accordingly, the Medical Board's determination regarding disability as well as the decision of the Board of Trustees as to the cause of an applicant'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 (*Boyd v New York City Employees' Retirement Sys.*, 202 AD3d 1082, 1082-83 [2nd Dept 2022], citing *Matter of Canfora v Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II*, 60 NY2d 347, 351; see also *Bradley v New York City Employees' Retirement Sys.*, 193 AD3d 847 [2nd Dept 2021]). Furthermore, substantial evidence demands only that a given inference is reasonable and plausible, not necessarily the most probable (*Matter of Haug*, 32 NY3d at 1046, citing *Matter of Ridge Rd. Fire Dist. v Schiano*, 16 N.Y.3d 494, 499 [2011]).

Accordingly in reviewing a disability determination, the Court may not weigh the medical evidence or substitute its own judgment for that of the Medical Board (*Giuliano v New York Fire Dept. Pension Fund*, 185 AD3d 812, 814 [2nd Dept 2020], citing *Matter of Santoro v Board of Trustees of N.Y. City Fire Dept. Art. 1-B Pension Fund*, 217 AD2d 660, 660, [2nd Dept 1995]). Even a conflict in the medical opinions of physicians does not provide a basis to set aside the Medical Board's determinations (*Bradley*, 193 AD3d at 847). The resolution of any conflicts in medical evidence are within the sole province of the Medical Board (*id.*).

In the instant case, the Medical Board examined and interviewed the petitioner on at least two occasions. The petitioner was given the opportunity to provide additional documentation in support of his claims. The Medical Board reviewed the medical evidence submitted on at least three occasions. The Medical Board concluded that the petitioner demonstrated that he had a severe disabling degenerative disease in his cervical spine, but that it was not causally linked to the December 8, 2017.

Although the petitioner claimed injuries to his cervical spine, lumbar spine and right shoulder, the Medical Board found that the lumbar spine and right shoulder were not disabling conditions. The Medical Board's report found conflicting information in their examinations of the petitioner and those of his treating physicians. In one instance, the Medical Board noted that the petitioner's treating orthopedist documented better range of motion in the petitioner's shoulder than was alleged. Although, the Medical Board reviewed records and notes from treatment providers who attributed the petitioner's injuries to the December 8, 2017 incident, it consistently maintained its opinion that the disability stemmed from a the prior accident in 2015 rather than the December 8, 2017 incident.

The Medical Board found sufficient evidence after its own examination and review of medical evidence to rationally and reasonably conclude that the petitioner's disability was a result of the progression of a degenerative condition of the cervical spine that began after the 2015 accident and that the incident of December 8, 2017 did not permanently aggravate his pre-existing condition. The Medical Board's recommended that the Board of Trustees deny ADR due to the fact that the December 8, 2017 did not cause a permanent exacerbation of the petitioner's underlying preexisting cervical and lumbar spine conditions and right shoulder.

Thereafter, the petitioner had the opportunity to appear with counsel and present arguments to Board of Trustees. The Board of Trustees discussed the petitioner's case

and ultimately decided to adopt a resolution denying the petitioner's application for ADR benefits.

Accordingly, NYCERS determination to deny the petitioner accident disability retirement benefits pursuant to Retirement and Social Security Law § 605-b based upon the credible evidence of the Medical Board was neither irrational nor arbitrary or capricious (*see Matter of Imbriale v Bd. of Trustees of New York City Employees' Retirement Sys.*, 29 AD3d 995, 995-96 [2nd Dept 2006]).

**CONCLUSION**

The petition of Dellwood Jones for judgment pursuant to CPLR Article 78 and New York Retirement and Social Security Law § 605-b annulling the respondent's determination of April 8, 2021, denying petitioner Accidental Disability Retirement benefits is denied.

The petition of Dellwood Jones for judgment pursuant to CPLR Article 78 and New York Retirement and Social Security Law § 605-b awarding petitioner Accidental Disability Retirement benefits is denied.

The petition of Dellwood Jones for judgment pursuant to CPLR Article 78 and New York Retirement and Social Security Law § 605-b remanding the matter back to NYCERS for additional consideration is denied.

The petition is dismissed.

The foregoing constitutes the decision, order and judgment of this Court.

ENTER:

*Francois A. Rivera*

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J.S.C.