

**Muglia v Shea**

2023 NY Slip Op 32011(U)

June 14, 2023

Supreme Court, New York County

Docket Number: Index No. 154677/2021

Judge: Richard Latin

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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**

**PRESENT:** HON. RICHARD LATIN **PART** **46V**

*Justice*

-----X

NICHOLAS MUGLIA,

Plaintiff,

- v -

DERMOT SHEA, AS POLICE COMMISSIONER OF THE CITY OF NEW YORK, AND AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THE POLICE PENSION FUND, ARTICLE II, THE BOARD OF TRUSTEES OF THE POLICE PENSION FUND, ARTICLE II, THE CITY OF NEW YORK

Defendant.

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**INDEX NO.** 154677/2021

**MOTION DATE** 06/16/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21, 23, 24, 25, 26, 28, 29, 30, 53

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents and for the reasons spread across the record on oral argument on March 2, 2023, it is ordered that the petition is determined as follows:

Petitioner, a retired New York City Police officer, brings this special proceeding asking the Court to review and annul respondent’s denial of an application for accident disability retirement pursuant to Administrative Code § 13-252. It is undisputed that petitioner sustained injuries on April 6, 2018 while using a Category II unmarked department vehicle while attempting to render aid to a disabled motorist. It is further undisputed that, pursuant to the NYPD Administrative Guide, Category II vehicles must be stored at a designated department facilities and operators of such vehicles are contractually prohibited from starting or ending their tour at the designated department storage facility<sup>1</sup>.

<sup>1</sup> Essentially, an officer will generally clock out at their precinct, ending their day, and then drop the Category II vehicle off at the storage facility.

Following the injury, the accident was investigated and deemed a line of duty accident by the patrol supervisor, investigating supervisor, and approved by both the executive officer of Patrol Borough Staten Island and the Medical Division. As a result, the Medical Division paid for all of petitioner's treatment rather than him having to use his own medical insurance. Thereafter, petitioner filed his application for Accident Disability Retirement. On February 10, 2021 the Board of Trustees of the Police Pension Fund ("Board of Trustees") voted six-to-six to deny petitioner Accident Disability Retirement and instead provide him with Ordinary Disability Retirement which offers substantially inferior benefits (*see generally Matter of Meyer v Board of Trustees of N.Y. City Fire Dept., Art. I-B Pension Fund*, 90 NY2d 139 [1997]; *Matter of City of New York v Schoeck*, 294 NY 559 [1945]).

Here, petitioner argues that his effort in the Category II vehicle to render aid to a disabled motorist constituted an injury that took place while taking police action. Moreover, they contend that the Board of Trustees' decision represented a deviation from past practice, and that petitioner should have been routinely approved for Accident Disability Retirement. In opposition, respondents contends that there was credible evidence to demonstrate that the petitioner was not on duty at the time he sustained his injuries. Additionally, respondents distinguish *Luisi v Safir* from this case in that even though Luisi was conducting police business before he was on duty, he was directed by a supervisor to respond to a crime scene.

In this Article 78 proceeding, judicial review is limited to determining whether the Board of Trustees' determination was not supported by substantive evidence and whether the decision was arbitrary and capricious (*see Russo v Board of Trustees of New York City Fire Dept., Article I-B Pension Fund*, 143 AD2d 674 [2d Dept 1988]). "A court cannot simply substitute its judgment for that of an administrative agency when the agency's determination is reasonable" (*City of New*

*York v New York State Nurses Ass'n*, 130 AD3d 28 [1st Dept 2015] quoting *District Council 37, Am. Fedn. of State, County & Mun. Employees, AFL-CIO v City of New York*, 22 AD3d 279 [1st Dept 2005]).

Here, the credible evidence based on the NYPD Administrative Guide is that petitioner was injured after his tour of duty ended. Petitioner's tour of duty simply consisted of the time between when he clocked in at his Manhattan precinct and clocked out at the Manhattan precinct and did not include the time in which he was required to pick up and drop off his Category II vehicle from the storage facility. Thus, petitioner cannot demonstrate that his injury was proximately caused in the performance of city-service. Accordingly, the determination of the Board of Trustees was rational and reasonable in concluding that the petitioner need not be afforded Accident Disability Retirement.


Nevertheless, while it be sufficiently reasonable, this Court is greatly troubled by the subject determination. If the standard of review were different, and it could substitute its judgment, this Court would disagree with the Feb. 10, 2021 determination and vote in line with the half of the Board that was in favor of providing Accident Disability Retirement. For the sake of public safety and in order not to further damage the public's opinion of the police in the current climate, officers should not be disincentivized from providing police assistance to those in need just because they may technically be "off the clock." If an uninterested police officer was taking action for the benefit of a civilian while in a police vehicle, there is also a reasonable inference that he was acting within the scope of his employment and not just as a Good Samaritan. Moreover, if prior practice was to routinely provide Accident Disability Retirement to those in these similar circumstances, this is all the more unfortunate for Nicholas Muglia.

Accordingly, it is hereby ORDERED that ADJUDGED that the petition is denied and dismissed; and it is further

ORDERED that any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and judgment of the Court.

<u>6/14/2023</u>					
DATE			RICHARD LATIN, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE