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Courts Overrule Medical Boards

## 2 Ex-Cops Win Right To Disability Pensions

By MARK TOOR | JANUARY 15, 2016

State courts have approved three-quarter disability pensions that were originally denied by their retirement system's Medical Board, for an NYPD officer who was injured in a scooter-training accident and a Sergeant who suffered a stroke while at work.



**BAD DAY ON THE SCOOTER:** Retired Police Officer Paramjit Gakhal in her uniform. Ms. Gakhal, who was seriously injured during scooter training when her vehicle went out of control and hit a barrier, was awarded three-quarters disability pay by a Court of Appeals panel.



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## A Serious Mishap

Officer Paramjit Gakhal was appointed to the NYPD in July 2001 and was working in the 107th Precinct in Queens when she was assigned to scooter training in April 2008.

On the first day of training, she “unexpectedly lost control of the scooter, causing the scooter to go off the scooter course,” according to a line-of-duty injury report filed by Lieut. Luis Perez, commander of the Police Academy driver-training unit, who was present for the crash. “The scooter then hit a metal barrier and continued into a metal cargo container.

“Officer Gakhal fell from the scooter and lost consciousness for a brief period of time,” the report continued. “When Officer Gakhal was able to respond she complained of pain throughout her body and in the areas of her head and arms.”

She was taken to Kings County Medical Center, where she was diagnosed with a break in one of the vertebrae of her spine, a concussion and bruising to the left wrist and left hand, the report said. She later experienced pain in the left shoulder and left knee as well as neurological symptoms, according to Police Pension Fund records.

“Sgt. Shawn Khan, the command supervisor, stated on the [Line-of-Duty] Injury Report that P.O. Gakhal was on duty, that there was no negligence on her part and that her injuries were considered ‘performance in Line of Duty,’” according to a letter to a Patrolmen’s Benevolent Association attorney from Ms. Gakhal’s lawyer, Jeffrey L. Goldberg.



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## **Medical Board's Logic**

The Pension Fund Medical Board found that she was disabled from performing the full duties of a police officer, but recommended retirement at half-pay, rather than the three-quarters disability she had sought.

“The Police Pension Fund takes the position that any accident in training is not a three-quarters injury,” Mr. Goldberg said in an interview.

A 3-1 decision by a Court of Appeals panel Jan. 5 found that “while injuries sustained during routine training exercises may not qualify for [three-quarters] benefits, here, the loss of control coupled with the scooter’s acceleration appears to have been sudden and out of the ordinary.”

Mr. Goldberg said the key to Ms. Gakhal’s victory in her Article 78 appeal to the Court of Appeals was Lieutenant Perez’s description of her loss of control as “unexpected.”

“If you know the Police Department, nobody puts anything down on paper that could come back at them,” Mr. Goldberg said.

## **Unsure About Precedent**

He said it wasn’t clear whether the case would set a precedent for other injuries experienced in training, as from running or judo instruction.

In the second case, Sgt. Grevirlene Kersellius was about to end her shift June 20, 2010, when she heard a radio report than an armed murder suspect was at large in upper Manhattan, according to a Dec. 14, 2015 ruling by State Supreme Court Justice Michael

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D. Stallman. She volunteered to go after him and chose Police Officer James Atkins as her driver.

At West 96th St. and Broadway, Ms. Kersellius “felt a pain in her neck, began feeling light-headed and developed a severe headache,” the decision said. Mr. Atkins took her to Mount Sinai St. Luke’s Hospital, where she was found to have a ruptured aneurysm and brain hemorrhage. “He probably saved her life,” Mr. Goldberg said.

Ms. Kersellius was later diagnosed as having had a stroke. She applied for three-quarters disability retirement, but the Pension Fund Medical Board recommended a half-pay benefit.

## **‘Congenital Abnormality’**

“The Medical Board found that Kersellius was disabled from performing full police duty, but concluded that [her] cerebral aneurysm was a congenital abnormality, which spontaneously ruptured,” Justice Stallman’s decision said.

The Heart Bill, a state law giving police officers and firefighters disability benefits for heart disease unless pension boards can establish that the problem was caused by something other than the pressures of duty, was amended in 2006 to include strokes, Mr. Goldberg said. The amendment also added hepatitis, HIV and tuberculosis as diseases that are presumed to be incurred in the line of duty.

“The theory behind the bill, as outlined by its proponents, is not only that heart conditions are an occupational hazard for police officers and firemen, but also that this is a unique condition which generally is not the result of any particular incident but involves a gradual and progressive degeneration as a result of the continuing strain and stress of the job,” the decision said.

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“...Evidence that [her] cerebral aneurysm is congenital is insufficient to rebut the Heart Bill presumption for stroke,” Justice Stallman ruled.

Ms. Kersellius had 18 years on the job at the time of her stroke, Mr. Goldberg said, and she retired at 20 years on half-pay to preserve her right to the \$12,000-a-year Variable Supplements Fund benefit, which is not given to those on three-quarter disability retirement.

Mr. Goldberg said that if the city does not appeal the decision she would have to pay back the VSF funds received already. But, he added, the additional money from the three-quarters retirement plus the fact that it is exempt from state and local taxes puts her ahead.



JEFFREY GOLDBERG: Questions Medical Board's standards.