

# The Chief

## Judge Blisters FDNY Medical Board For Denying WTC Disability Pension

THE CHIEF LEADER | TOP STORY

By BOB HENNELY | FEBRUARY 15, 2019



'SO MANY GUYS OUT THERE WITH CANCERS': Ex-Firefighter Scott Gaffney (center), whose bid for a World Trade Center-related disability pension gained new life when a Brooklyn Supreme Court Justice remanded his application to the Fire Department Medical Board for further consideration in a searing opinion questioning its methodology, said he knew of many other firefighters with serious illnesses developed during their time at Ground Zero whose claims had been rejected.

A retired Firefighter who left the job after he was placed on World Trade Center-related medical leave has won an unusual state court victory that requires the Fire Department's Medical Board to reconsider its rejection of his line-of-duty disability-pension claim.

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This latest win came in an Article 78 proceeding and is part of what WTC legal experts say is a growing body of case law that may provide key precedents for World Trade Center first-responders who strike out with applications for disability pensions worth three-quarters of final average salary.

## **Had Chronic Sinusitis**

Former Firefighter Scott Gaffney, 47, was placed on medical leave in September 2015 after battling World Trade Center chronic sinusitis for years that ultimately required surgery. After 20 years on the job, he retired the next month and submitted his application for a WTC-related disability pension in April 2016.

For Mr. Gaffney, who subsequently moved to Florida with his wife and two daughters, ages 15 and 13, the stakes are very high. He calculated the disability pension could mean an additional \$3,000 a month tax-free, compared to an ordinary disability allowance. In a phone interview he said he moved partly on the advice of his physician because of the humid climate and because Florida's public colleges would be more affordable.

His application was twice rejected by the Fire Department's Medical Board, in September 2016 and again in June 2017. A month later, the Fire Pension Fund's Board of Trustees affirmed the Medical Board's rejection.

"When you get up that high to the level where the people are that are making all these decisions all you are is a number in a file," Mr. Gaffney said. "You can have a file that is three inches thick and they will deny it. And there are so many other guys out there [in similar situations] with lung issues, stomach ailments. There are guys out there with cancers and the first thing the Medical Board does is knock you."



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## Judge's Harsh Critique

Last month, in ordering that the Medical Board take another look at their decision, Brooklyn Supreme Court Justice Devin P. Cohen ruled the board's rejection was "not supported by credible evidence" and failed to take into account the basic occupational requirements of being a Firefighter.

"Indeed, the Medical Board's determination does not describe duties of a Firefighter or identify medical findings that show petitioner can perform such duties," wrote Judge Cohen. "Consequently, the reasons for concluding that petitioner is not disabled from performing his duties as a Firefighter due to his chronic sinusitis are not supported by credible evidence clearly stated in the Medical Board's reports."

In a statement, the FDNY confirmed Mr. Gaffney's case would be "remanded to the Medical Board for re-evaluation, followed by a recommendation to the Board of Trustees."

"Normally, the Medical Board's disability findings are entitled to great deference," said Jeffrey Goldberg, who represents Mr. Gaffney. "But here, the court found support in case law to remand the application when the Medical Board failed to substantiate their finding. Like several recently published decisions, this case scrutinizes the city's application of the laws governing service-connected disability for its employees."

## Originally a Cop

Mr. Gaffney, who spent the first six-years of his city service with the NYPD, moved over to the FDNY in 1999. "It's a better quality of life because your scheduling is better," he said. "You can be home more. You can pick up and drop off the kids at school."



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On 9/11 he was working out of Engine 306 on Bell Blvd. in Queens. His unit was not called to Ground Zero until the next day. “We were all on recall—nobody could leave, nobody could go home. That was it,” he said. Three months after the attack and collapse of the towers, smoke was still emanating from the debris field.

## **'Safety on Back Burner'**

Mr. Gaffney said, that at the time, taking occupational precautions was a total afterthought. “It was let’s just get it done,” he said. “We got a lot of guys missing... Nobody wore masks. Safety was put on the back burner compared to who we could get out of there. It’s hard to explain.”

For a few years before Mr. Gaffney had the surgery, he battled symptoms while trying to hold down his job as a Firefighter. “The headaches, the sinus pressure and the chronic sinus infections just kept gradually building up,” he said. “I was in the firehouse and the guys were saying ‘hey dude, you got another sinus infection? You better get yourself checked out.’ It got to the point I was tapping out, I was going sick and going back and forth to the Medical Office.”

While the surgery relieved his airways, three years after his retirement he suffers five or six sinus infections a year. “I must have had a hundred prescriptions in the last couple of years,” he said. “I can’t be anywhere near smoke or other irritants.”