

Index No.: 524405/2023

At an IAS Term, Part 13, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse at 320 Jay Street, Brooklyn, New York on the 5th day of February 2024

P R E S E N T:

HON. RUPERT V. BARRY, A.J.S.C.

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In the Matter of the Application of	:	Motion Seq. No.: 1
	:	Cal. No.: 13
KEVIN HERNANDEZ,	:	Index No.: 524405/2023
	:	
Petitioner,	:	
	:	<u>DECISION & ORDER</u>
For a Judgment under Article 78 of	:	
the Civil Practice Law and Rules,	:	
	:	
-against-	:	

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM,

Respondent.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner's application for an order directing Respondent to vacate the order that denied him performance of duty disability, grant Petitioner performance of duty disability retirement benefits, or remand the case to Respondent for further relief. NYSCEF Doc. Nos: 1-41.

Upon the foregoing cited papers, and after oral arguments, this Court finds as follows:

Petitioner alleges that an order by Respondent which denied him performance of duty disability was arbitrary and capricious. Petitioner, formerly employed as a supervisor by Department of Sanitation of The City of New York, seeks performance of duty disability after sustaining multiple injuries while at work. Petitioner first alleged injury occurred on January 30, 2018, when Petitioner fell on ice while issuing a summons for unlawful accumulation of snow and ice, and thereafter on March 13, 2018, due to a slip and fall while in the office. Thus, Petitioner

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filed the instant order to show cause, pursuant to Article 78 of the Civil Practice Law and Rules, seeking the following: (1) a judicial review and dismissal of the order denying him performance of duty disability; (2) an order granting Petitioner performance of duty disability retirement; or (3) a remand to Respondents for further consideration.

In a CPLR Article 78 proceeding, “The courts cannot interfere unless the action complained of is arbitrary and capricious” (*Rome v New York State Health Dep’t.*, 65 AD2d 220, 224 [4th Dept 1978]). A court cannot overturn a decision of a board unless, “the decision under review is arbitrary and constitutes an abuse of discretion” (*Diocese of Rochester v Planning Bd. Of Brighton*, 1 NY2d 508, 520 [1956]).

Respondent argues that Petitioner should not prevail because falling on black ice while writing tickets is part of the expected consequences of his job. Does that mean that after a freeze, Plaintiff would have been in his rights to refuse to write tickets until a thaw in that he did not want to suffer the expected injuries from slipping and falling on black ice? This Court believes that as against logic as the scenario as just described is, it does illuminate what this Court believes would be not only bad policy but also would result in arbitrary and capricious findings. Such findings are supported in logic. If a police officer was hit by a car while writing a traffic ticket, it is doubtful that anyone would oppose that officer’s line of duty retirement. To view similar caused injuries to a public servant so differently owing, apparently, solely to the job they perform, to this Court would be arbitrary and capricious.

This Court finds that Respondent denial of Petitioner performance of duty disability claim was arbitrary and capricious. Accordingly, it is

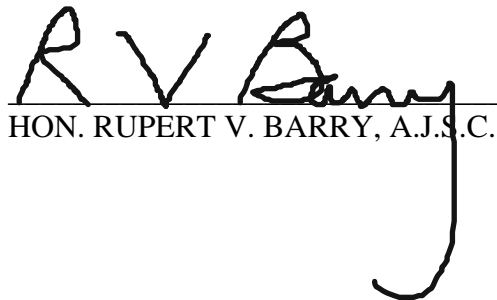
ORDERED, that Petitioner’s motion directing that Respondent vacate its order denying Petitioner performance of duty disability is GRANTED. It is further

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ORDERED, that Petitioner's motion to direct Respondent to grant him a new hearing in line with this Court's instant decision and order is GRANTED.

This constitutes the decision and order of this Court.

*All applications not specifically addressed herein are Denied.


HON. RUPERT V. BARRY, A.J.S.C.