

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JEFFREY H. PEARLMAN **PART** **44M**

Justice

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THOMAS MARESCA,

Petitioner,

- v -

LAURA KAVANAGH, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY FIRE DEPARTMENT ARTICLE I-B
PENSION FUND, LOUIS LOMBARDI, DAMIAN MARTINO,
PETER NEUMANN, LAWRENCE SCHARER

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)

In this action, Petitioner Thomas Maresca (“Petitioner”) is seeking a judgment reviewing and annulling the action of the Fire Commissioner of the City of New York, the Board of Trustees and the Medical Board of the New York City Fire Department Article I-B Pension Fund (“Respondent”), pursuant to Article 78 of the CPLR. Respondent denied Petitioner accident disability retirement (“ADR”) benefits. When a party makes an Article 78 motion, “judicial review is limited to whether the determination was irrational, arbitrary and capricious or contrary to law.” CPLR §7803(3) allows for judicial review of administrative actions determining “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.” “Administrative action is irrational or arbitrary and capricious if it is taken without sound basis in reason or regard to the facts.” *Matter of Madison County Indus. Dev. Agency v. State of N.Y. Auths. Budget Off.*, 33

N.Y.3d 131, 135, quoting *Matter of Wooley v. New York State Dept. of Correctional Servs.*, 15 N.Y.3d 275, 280 (2010). “If a determination is rational, it must be sustained even if...another result would also have been rational.” *Matter of Madison County Indus. Dev. Agency v. State of N.Y. Auths. Budget Off.*, 33 N.Y.3d at 135. Further, the determination must be sustained “even if the court concludes that it would have reached a different result than the one reached by the agency.” *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (citing *Matter of Pell v. Board of Educ. of Union free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 24 N.Y.2d 222.) Moreover, when “the judgement of the agency involves factual evaluations in the area of the agency’s expertise and is supported by the record, such judgement must be accorded great weight and judicial deference.” *Flacke v. Onondaga Landfill Sys.*, 69 N.Y.2d 355, 363 (1987).

Petitioner sustained three line of duty (“LOD”) injuries over the course of his career in the FDNY on November 29, 2007, March 1, 2014, and January 23, 2021, all involving his left shoulder. *FDNY member injury reports*, Exh(s). B and D., NYSCEF Doc. 4 and 6. On October 7, 2022, the Fire Commissioner applied for disability retirement on behalf of the Petitioner concerning the 2021 injury. When a New York City Fire Department Pension Fund (“FPF”) member is awarded ADR benefits, that member is allowed to retire and receive “three-quarters if his or her final compensation on the date of his or her retirement.” Administrative Code §13-366. To be entitled to ADR benefits, a member must show that he or she is “a member in city-service” who is “physically or mentally incapacitated for the performance of city-service, as a natural and proximate result of an accidental injury received in such city-service.” Administrative Code §13-353.¹ On January 4, 2023, the Medical Board made a recommendation to the Board of Trustees

¹ A “member” is a “person who was an officer, member or probationary member of the uniformed force of the department.” Admin Code § 13-301.

approving the Petitioner to ordinary disability retirement (“ODR”) benefits, but not ADR benefits, determining that the Petitioner’s left shoulder injury was not causally related to the 2021 LOD injury, but rather a chronic degenerative joint disease. *Medical Board Recommendation*, Exh. 7., NYSCEF Doc. 29. Thereafter, the application was remanded back to the Medical Board by the Board of Trustees for consideration of additional evidence, and on March 26, 2024, the Medical Board ultimately issued a Final Determination that Petitioner’s disability was due solely to a degenerative condition unrelated to his LOD injuries, and only granted Petitioner ODR benefits, not ADR benefits. *Letter from the Board of Trustees*, Exh. J., NYSCEF Doc. 12.

Petitioner alleges he has met his burden of demonstrating this his left shoulder injury is the natural and proximate result of injuries sustained in his previous LOD accidents. Petitioner makes three arguments as to why the Medical Board’s Final Determination was arbitrary and capricious. First, Petitioner argues that the Respondent failed to mention in their report that Petitioner’s 2007 LOD injury is causally related to the 2021 LOD injury that led to this dispute. Second, Petitioner argues that the Respondent’s denial of ADR benefits was purely conclusory with no rational and reasonable basis. Third, Petitioner argues that courts have great judicial latitude to overrule the respondents’ determination on the grounds that the Medical Board’s causal findings are irrational and contrary to credible evidence.

Petitioner was appointed to the FDNY in 2003. On November 29, 2007, Petitioner fell through a staircase to the floor below while on the job which caused an injury to his left shoulder. *FDNY member injury report*, Exh. B., NYSCEF Doc. 4. On March 1, 2014, Petitioner slipped on ice while on the job when water from his hose line froze. *Id.* Lastly, on January 23, 2021, a ceiling of a cathedral collapsed on top of the Petitioner which caused an injury to his left

shoulder. *FDNY member injury report*, Exh. D., NYSCEF Doc. 6. Since the 2021 injury, the Petitioner has never returned to the FDNY. *FDNY Bureau of Health Services Disability Certification*, Exh. F., NYSCEF Doc. 8. Under controlling precedent, “where a line-of-duty injury precipitates the development of a latent condition or aggravates a preexisting condition, the resulting disability is deemed service-related for purposes of ADR.” See *Tobin v. Steisel*, 64 N.Y.2d 254 (1985); *Baranowski v. Kelly*, 95 A.D.3d 746 (1st Dept. 2012). Respondent has failed to meaningfully engage with the etiological significance of the earlier 2007 injury, despite credible evidence of cumulative trauma, and did not adequately explain why the acute trauma of the 2021 incident was not causally related to Petitioner’s disability. Respondent does mention Petitioner’s 2007 injury in their January 3, 2024, Medical Board Report, but merely concludes that it is not causally related to the present condition. Respondent relies on *Matter of Clarke v. Bd. of Trustees of N. Y. City Fire Dept. Art. 1-B Pension Fund*, 46 A.D.3d 559, 560 (2d Dept 2007) “where conflicting medical evidence and medical reports are presented to the Medical Board, it is solely within its province to resolve such conflicts.” However, due to the reports and statements of Chief Medical Officer, Kerry J. Kelly, Dr. Ann Kelly, and Dr. Joseph Sambataro, acknowledging the significance and causal relationship between all three of Petitioner’s LOD left-shoulder injuries, this Court agrees that Petitioner’s previous injuries is not merely a degenerative condition and unrelated to Petitioner’s 2021 injury. The mere conclusion that there were some age-related findings on Petitioner’s medical imaging does not mean the injuries were not aggravating. See *Tobin*. Respondent should have provided a more reasonable basis for dismissing such injury. See *Matter of Baranowski v. Kelly*, 95 A.D.3d 746 (1st Dept. 2012) and *Matter of Hamilton v. Shea*, 2022 NY Slip Op 30026 (N.Y. Sup. Ct. 2022) (each overruling the respondents’ ethological conclusions of failing to acknowledge previous line-of-duty injuries).

Respondent asserts that Petitioner failed to meet his burden to submit medical evidence supporting his claim that the 2021 LOD incident caused his disability. The Court of Appeals have held that a Medical Board's determinations are to be upheld if they are based on "credible evidence." *Matter of Meyer v. Board of Trustees*, 90 N.Y.2d 139, 147 (1997). Credible evidence is defined as "evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered...and further that it must be evidentiary in nature and not merely a conclusion of law, nor mere conjecture or unsupported evidence." *Id.* On January 23, 2021, a cathedral roof collapsed on Petitioner while on the job which then he was not medically permitted to return to the FDNY. Petitioner was treated for shoulder surgery on April 1, 2021, by Dr. Anne Kelly. FDNY Chief Medical Officer Dr. Kerry J. Kelly spoke at the Trustees' meeting in support of Petitioner, relying on the postoperative reports of his orthopedic surgeon, Dr. Anne Kelly. She explained that Petitioner's 2021 injury was a significant acute trauma, not related to wear and tear, but caused by falling downstairs after being struck by debris. Before this injury, he had no functional limitations. The 2021 injury caused extensive labral tears, instability, and required surgical repair. Imaging showed that his shoulder damage had progressed beyond what was seen in 2014, indicating new and worsening injury rather than just preexisting degeneration. Unlike his earlier injury, which he recovered from with therapy, the 2021 injury was more severe, necessitated surgery, and left him unable to regain full strength or return to work despite treatment and rehabilitation. This finding would be deemed as credible evidence that would warrant Petitioner to receive ADR benefits.

Based on the above reasoning, it is hereby **ORDERED** that Petitioner's motion is granted.

7/10/2025

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

HON. JEFFREY H. PEARLMAN
J.S.C.

JEFFREY H. PEARLMAN, J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE