

Westlaw

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**Gaudio v. Board of Trustees of New York City
Fire Dept., Article 1-B Pension Fund**
N.Y.A.D. 2 Dept., 2007.

Supreme Court, Appellate Division, Second
Department, New York.

In the Matter of Anthony GAUDIOSO, appellant,
v.

BOARD OF TRUSTEES OF NEW YORK CITY
FIRE DEPARTMENT, ARTICLE 1-B PENSION
FUND, etc., et al., respondents.
May 1, 2007.

Background: Article 78 proceeding was brought to review determination of the board of trustees of fire department's pension fund denying application for accidental disability retirement benefits. The Supreme Court, Kings County, Ambrosio, J., denied petition, and appeal was taken.

Holding: The Supreme Court, Appellate Division, held that claimant's disabling injuries were the result of service-related accident.

Reversed.

West Headnotes

[1] Officers and Public Employees 283 ⇨ **101.5(1)**

283 Officers and Public Employees
283III Rights, Powers, Duties, and Liabilities
283k93 Compensation and Fees
283k101.5 Pensions and Benefits
283k101.5(1) k. In General. Most

Cited Cases
Accidental disability retirement benefits claimant's disabling injuries, namely an extensive labral tear with an associated small paralabral cyst and related

shoulder injuries, were a natural and proximate result of a service-related accident, warranting granting of benefits; magnetic resonance imaging (MRI) studies done two months prior to the accident found no cyst, only a suspected anterior labral tear and other mild pathology.

[2] Municipal Corporations 268 ⇨ **200(10)**

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(B) Municipal Departments and
Officers Thereof
268k193 Fire
268k200 Pensions and Benefit Funds
268k200(8) Proceedings to Obtain
Pensions or Benefits
268k200(10) k. Review of
Decisions. Most Cited Cases

Where board of trustees of fire department's pension fund denies an application for an accident disability pension by a tie vote, the appellate court may set aside that determination only if it can conclude as a matter of law that the petitioner's disability was a natural and proximate result of a service-related accident.

****397** Jeffrey L. Goldberg, P.C., Lake Success, N.Y. (Chester P. Lukaszewski of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Larry A. Sonnenshein and Sharyn Rootenberg of counsel), for respondents.

ROBERT A. SPOLZINO, J.P., GABRIEL M. KRAUSMAN, PETER B. SKELOS, and THOMAS A. DICKERSON, JJ.

***638** In a proceeding pursuant to CPLR article 78 to review a determination of the respondent Board of Trustees of the New York City Fire Department, Article 1-B Pension Fund, dated May

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24, 2005, which denied the petitioner's application for service-related accidental disability retirement benefits, the petitioner appeals from a judgment of the Supreme Court, Kings County (Ambrosio, J.), dated March 16, 2006, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is reversed, on the law, with costs, the petition is granted, the determination is annulled, and the matter is remitted to the respondent Board of Trustees of the New York City Fire Department, Article 1-B Pension Fund for the granting of the petitioner's application for service-related accidental disability retirement benefits.

[1][2] Where, as here, the respondent Board of Trustees of the New *639 York City Fire Department, Article 1-B Pension Fund, denies an application for a service-related accidental disability pension by a tie vote, pursuant to *Matter of City of New York v. Schoeck*, 294 N.Y. 559, 63 N.E.2d 104, this court may set aside that determination if we conclude as a matter of law that the petitioner's disability was a natural and proximate result of a service-related accident (see *Matter of Canfora v. Board of Trustees of Police Pension Fund of Police Dept. of City of NY*, 60 N.Y.2d 347, 469 N.Y.S.2d 635, 457 N.E.2d 740; *Matter of Farley v. Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 13 A.D.3d 531, 787 N.Y.S.2d 76; *Matter of Guidal v. Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 275 A.D.2d 458, 713 N.Y.S.2d 130). Here, the Medical Board of the New York City Fire Department, Article 1-B Pension Fund (hereinafter the Medical Board) **398 found the petitioner to be permanently disabled as a result of an extensive labral tear with an associated small paralabral cyst and related shoulder injuries. MRI studies done two months prior to the incident, however, found no cyst, only a suspected anterior labral tear and other mild pathology. This evidence was sufficient to establish as a matter of law that the disabling injuries were caused by the incident. There is no credible evidence on this record to support the Medical Board's conclusion that the " Member Injury Report" "describes a situation that is not of sufficient magnitude to aggravate" the petitioner's

pre-existing condition.

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