

Westlaw.

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**H**

Rodriguez v. Board of Trustees of New York City  
Dept.  
N.Y.A.D. 2 Dept., 2004.

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

In the Matter of Juan RODRIGUEZ, appellant,  
v.

BOARD OF TRUSTEES OF NEW YORK CITY  
FIRE DEPARTMENT, Article I-B Pension Fund,  
etc., et al., respondents.

Jan. 12, 2004.

**Background:** Claimant, a firefighter, brought article 78 proceeding to review a determination of the board of trustees of city fire department denying him accident disability retirement benefits. The Supreme Court, Kings County, G. Aronin, J., denied the petition, and claimant appealed.

**Holding:** The Supreme Court, Appellate Division, held that medical findings were insufficient to sustain determination of medical board that firefighter was not disabled and was thus not entitled to accident disability retirement benefits.

Reversed and remitted.

West Headnotes

**[1] Municipal Corporations 268 ⇨ 200(8.1)**

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(8.1) k. In General.

**Most Cited Cases**

Medical findings were insufficient to sustain determination of medical board that firefighter was not disabled and was thus not entitled to accident disability retirement benefits; examining physicians did not conclude that tremors which firefighter had been experiencing were disabling and did not sufficiently address firefighter's contention that the spinal injury which he received in the line of duty was the proximate and natural cause of his disability.

**[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**

In a proceeding for accident disability retirement benefits, the determination of the Medical Board as to whether a firefighter is disabled is conclusive if it is supported by some credible evidence and is not irrational.

**\*\*133** Jeffrey L. Goldberg, P.C., Lake Success, N.Y. (Mary B. Rocco of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Ronald E. Sternberg and Suzanne K. Colt of counsel), for respondents.

NANCY E. SMITH, J.P., STEPHEN G. CRANE,  
WILLIAM F. MASTRO, and REINALDO E.  
RIVERA, JJ.

**\*501** In a proceeding pursuant to CPLR article 78 to review a determination of the respondents

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dated June 28, 2001, denying the petitioner accident disability retirement benefits, the petitioner appeals from a judgment of the Supreme Court, Kings County (G.Aronin, J.), dated April 19, 2002, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is reversed, on the law, with costs, the petition is granted to the extent that the findings of the Medical Board of the New York City Fire Department, Article I-B Pension Fund are annulled, and the matter is remitted to the respondent Board of Trustees of the New York City Fire Department, Article I-B Pension Fund for further proceedings in accordance herewith.

[1][2] The issue of whether a firefighter is disabled is determined by the Medical Board of the New York City Fire Department, Article I-B Pension Fund (hereinafter the Medical Board). The determination of the Medical Board is conclusive if it is supported by some credible evidence and is not irrational (*see Matter of Meyer v. Board of Trustees of N.Y. City Fire Dept., Art. I-B Pension Fund*, 90 N.Y.2d 139, 145, 659 N.Y.S.2d 215, 681 N.E.2d 382; *Matter of Drew v. New York City Employees' Retirement Sys.*, 305 A.D.2d 408, 409, 758 N.Y.S.2d 500). Here, the medical findings do not sustain the determination \*502 of the Medical Board. Accordingly, the determination is not rational. The physicians who examined the petitioner did not conclude that the tremors which he had been experiencing were disabling and failed to sufficiently address the petitioner's contention that the spinal injury which he received in the line of duty was the proximate and natural cause of his disability entitling him to accident disability retirement benefits as a matter of law (*see generally Matter of Canfora v. Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II*, 60 N.Y.2d 347, 352, 469 N.Y.S.2d 635, 457 N.E.2d 740). Accordingly, we reverse the judgment and grant the petition to the \*\*134 extent of annulling the findings of the Medical Board and remitting the matter to the respondent Board of Trustees of the New York City Fire Department (hereinafter the Board of Trustees), Article I-B Pension Fund for new medical reports and new findings by the Medical

Board, and a new determination by the Board of Trustees.

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