

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

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In the Matter of the Application of

LISA SANTANA,

Petitioner,

For a judgment under Article 78 of the Civil
Practice Law and Rules

**NOTICE OF ENTRY
OF ORDER**

-against-

Index No. 100869/2019

JAMES O'NEILL, as the Police Commissioner of the City
of New York, and as Chairman of the Board of Trustees of
the Police Pension Fund, Article II and THE BOARD OF
TRUSTEES of the New York City Police Pension Fund,
Article II,

Respondents.

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PLEASE TAKE NOTICE, that an Order of the Hon. Erika M. Edwards, dated April 7,
2021, of which the within is a true copy, was duly entered and filed in the Office of the Clerk of
the County of New York on April 8, 2021

DATED: Port Washington, New York
April 16, 2021



JEFFREY L. GOLDBERG, ESQ.

Goldberg & McEnaney, LLC
Attorneys for Petitioner
14 Vanderventer Avenue, Suite 129
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(516) 775-9400
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TO: JAMES E. JOHNSON, ESQ.
NYC Corporation Counsel
100 Church Street
New York, New York 10007

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

HON. ERIKA M. EDWARDS
J.S.C.
Justice

PRESENT: _____

PART 11

Index Number : 100869/2019
SANTANA, LISA
vs
JAMES O'NEILL, AS THE POLICE
Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	_____	No(s). _____
Answering Affidavits — Exhibits	_____	No(s). _____
Replying Affidavits	_____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is *Decided as per the attached Decision and order*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
APR 08 2021
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/7/21

Erika Edwards J.S.C.
HON. ERIKA M. EDWARDS J.S.C.

- | | | |
|---|---|---|
| 1. CHECK ONE: | <input checked="" type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> NON-FINAL DISPOSITION |
| 2. CHECK AS APPROPRIATE: MOTION IS: | <input type="checkbox"/> GRANTED | <input type="checkbox"/> DENIED |
| 3. CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | <input checked="" type="checkbox"/> GRANTED IN PART |
| | <input type="checkbox"/> DO NOT POST | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | | <input type="checkbox"/> SUBMIT ORDER |
| | | <input type="checkbox"/> REFERENCE |

HON. ERIKA M. EDWARDS
J.C.

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

PRESENT: HON. ERIKA M. EDWARDS PART 11

Justice

_____X

INDEX NO. 100869/2019

In the Matter of the Application of

MOTION DATE 6/6/2019

LISA SANTANA,

Petitioner,

MOTION SEQ. NO. 001

For a Judgment under Article 78 of
the Civil Practice Law and Rules,

- v -

JAMES O'NEILL, as the Police Commissioner of the City of
New York, and as Chairman of the Board of Trustees of the
Police Pension Fund, Article II and THE BOARD OF
TRUSTEES of the New York City Police Pension Fund,
Article II,

Respondents.

**DECISION + ORDER ON
MOTION**

FILED

APR 08 2021

_____X

**COUNTY CLERK'S OFFICE
NEW YORK**

The following papers, numbered 1 _____, were read on this application to/for	Art. 78
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits	No(s) <u>1</u>
Answering Affidavits - Exhibits	No(s) <u>2</u>
Replying	No(s) <u>3</u>

Upon the foregoing documents, the court grants Petitioner Lisa Santana's ("Petitioner") Article 78 Petition in part to the extent that the court remands this matter to Respondent The Board of Trustees of the New York City Police Pension Fund, Article II ("PPF Board") for a new investigation and reconsideration of its determination to deny Petitioner accident disability retirement for injuries she sustained when she fell down the steps on March 26, 2011, and its finding that Petitioner was caused to be disabled from a line of duty incident and not accident, as defined by New York City Administrative Code § 13-252. Additionally, the court directs the PPF Board to authorize a new investigation to determine the circumstances and cause of Petitioner's fall, including, but not necessarily limited to, whether carbon paper on the steps caused and/or

contributed to Petitioner's fall, which should include witness interviews of those who witnessed Petitioner's fall and those who have knowledge of the substance of the initial line of duty injury paperwork prior to the paperwork being lost by the New York City Police Department ("NYPD").

Petitioner brought this Article 78 proceeding against Respondent James O'Neill, as the Police Commissioner of the City of New York, and as Chairman of the Board of Trustees of the Police Pension Fund, Article II and PPF Board (collectively, "Respondents") seeking an order reviewing and annulling Respondents' denial of Petitioner's accident disability retirement and determining it to be arbitrary, capricious, unreasonable and unlawful; an order directing Respondents to retire Petitioner with an accident disability retirement allowance retroactive to the date of her service retirement, as a matter of law; or in the alternative, an order remanding the matter to the PPF Board "to conduct an investigation and interview the witnesses of petitioner's March 26, 2011 LOD accident, confirming the events leading to petitioner's bilateral knee injuries that day". Petitioner also seeks an order, pursuant to CPLR 2307(a), directing Respondents to serve and file certain administrative records and minutes related to Petitioner's accident disability retirement application.

Respondents oppose Petitioner's application and argue in substance that the petition fails to state a cause of action, that Petitioner failed to demonstrate to the PPF Board that she was entitled to accident disability retirement benefits, that the PPF Board's determination that her injuries and disability were the result of an incident and not an accident was reasonable, supported by the credible evidence in the record, lawful, and not arbitrary or capricious, and the court does not have the authority to direct Respondents to grant Petitioner accident disability retirement.

In an Article 78 proceeding, courts are required to grant a governmental agency broad discretion and the scope of judicial review is limited to whether the agency's determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or was an abuse of discretion (CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; *Scherbyn v BOCES*, 77 NY2d 753, 757-758 [1991]). A determination subject to review under Article 78 exists when, first, the agency "reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be significantly ameliorated by further administrative action or by steps available to the complaining party" (*Walton v. New York State Dept. of Correctional Servs.*, 8 NY3d 186, 194 [2007]).

Here, Petitioner was appointed as a police officer with the NYPD on January 20, 2004 and she was a member of the Police Pension Fund. On March 26, 2011, she alleges in substance that she slipped on carbon paper and fell down the steps of a rear staircase in the precinct while she was working as a police officer. Petitioner further alleges that she did not see the black carbon paper because the color blended in with the color of the steps. Petitioner further alleges that the accident caused her to become disabled and forced her to retire because she was unable to perform her duties as a police officer due to injuries she sustained to both knees.

Petitioner submitted a Line of Duty Injury Report on the day of her fall, but it was lost by NYPD and subsequently another report was submitted on January 27, 2014. Over the next several years, Petitioner sought to receive accident disability retirement benefits instead of ordinary disability retirement benefits. Respondents allege that there were discrepancies in the initial version of the events and subsequent evidence as to whether Petitioner slipped on carbon paper. After recommendations for Petitioner to receive accident disability retirement benefits,

Respondents reversed these determinations and granted Petitioner ordinary disability retirement benefits. The PPF Board determined in substance that Petitioner's disability was caused by an incident and not an accident as defined by the statute because of such conflicting evidence.

The court finds that Petitioner demonstrated that the PPF Board's determination was arbitrary and capricious. Additionally, it appears that the PPF Board relied heavily on a determination that Petitioner's initial description of the cause of the accident did not include details regarding the carbon paper and it credited the initial reports over subsequent evidence. However, the initial Line of Duty injury paperwork was lost by NYPD, through no fault of Petitioner. Petitioner submitted witness statements and other evidence to corroborate her testimony that she slipped on carbon paper.

Although courts give great deference to an agency's determination, based upon the arguments of the parties and the applicable statutes and controlling case law, the court determines that remand is appropriate.

As such, it is hereby

ORDERED that the court grants Petitioner Lisa Santana's Article 78 Petition in part to the extent that the court remands this matter to Respondent The Board of Trustees of the New York City Police Pension Fund, Article II for a new investigation and reconsideration of its determination to deny Petitioner accident disability retirement for injuries she sustained when she fell down the steps on March 26, 2011, and its finding that Petitioner was caused to be disabled from a line of duty incident and not accident as defined by New York City Administrative Code § 13-252; and it is further

ORDERED that the court directs Respondent The Board of Trustees of the New York City Police Pension Fund, Article II to authorize a new investigation to determine the

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

I, **STEPHEN SURRETT**, being duly sworn, say:

I am not a party to the action, am over 18 years of age and reside in Long Island, New York,

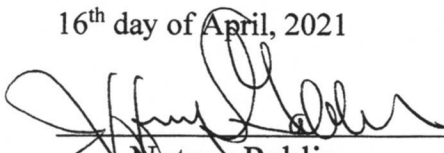
On April 16, 2021, I served a copy of the **NOTICE OF ENTRY OF ORDER** by and depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service in New York to the following person at the last known address set forth after each name:

James E. Johnson, Esq.,
The City of New York Law Department
100 Church Street
New York, NY 10007
Attn: Darren Trotta, Esq.
dtrotter@law.nyc.gov


STEPHEN SURRETT

Sworn to before me this

16th day of April, 2021




Notary Public

JEFFREY L. GOLDBERG
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01GO1470103
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES MAY 31, 2023

circumstances and cause of Petitioner's fall, including, but not necessarily limited to, whether carbon paper on the steps caused and/or contributed to Plaintiff's fall, which should include witness interviews of those who witnessed Petitioner's fall and those who have knowledge of the substance of the initial line of duty injury paperwork prior to the paperwork being lost; and it is further

ORDERED that this constitutes the decision and order of the court.

4/7/2021
DATE


ERIKA M. EDWARDS, J.S.C.
HON. ERIKA M. EDWARDS
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

FILED

APR 08 2021

**COUNTY CLERK'S OFFICE
NEW YORK**

New York County Clerk's Index No. 100869/2018

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

In the Matter of the Application of

LISA SANTANA,

Petitioner,

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-against-

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BOARD OF TRUSTEES of the Police Pension Fund,
Article II,

NOTICE OF ENTRY OF ORDER

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