

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

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

Earl Hamilton

INDEX NO. 153559-2021

- v -

MOT. DATE

Dermot F. Shea, et. al.

MOT. SEQ. NO. 001


The following papers were read on this motion to/for <u>vacatur/annulment</u>	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	NYSCEF DOC No(s). _____
Notice of Cross-Motion/Answering Affidavits — Exhibits	NYSCEF DOC No(s). _____
Replying Affidavits	NYSCEF DOC No(s). _____

In this proceeding, petitioner Earl Hamilton ("Hamilton") seeks an order pursuant to CPLR Article 78 annulling the determination made by the respondents, Dermot F. Shea, and the Board of Trustees of the New York City Police Pension Fund Article II (together the "respondents") which denied petitioner's application for Accident Disability Retirement ("ADR"). The respondents have answered the petition and oppose the relief sought. For the reasons that follow, the petition is granted to the extent that the underlying determination is annulled, and petitioner's application is remanded to the Police Pension Fund's Medical Board and Board of Trustees for review.

The relevant facts are as follows. On March 19, 2002, Hamilton was in the line of duty when he was thrown to the ground and dragged by a motorist during a routine car stop. He sustained an injury to his left knee which required treatment, surgery and four years of rehabilitation. During his four-year rehabilitation, Hamilton worked in a limited capacity and was assigned to restricted duty. On May 17, 2006, Hamilton was recommended to return to full duty by the NYPD District Orthopedic Surgeon. He returned to full duty as a Detective First Grade, allowing him to avoid routine patrol and work more administrative assignments.

On April 10, 2019, Hamilton was assigned to a Transit High Visibility Post. He was called to investigate a suspicious package under the seat of a northbound #6 train at the East 14th Street Station. When he crouched to probe the package in order to discern its contents, Hamilton felt a sharp pain in his left knee. He felt continuing discomfort in that knee for the remainder of the day. Later MRIs of Hamilton's left knee gave the impression of osteoarthritis. This incident was also qualified as a line of duty injury. As a result of this injury and diagnosis, on May 22, 2020, Hamilton submitted an application for ADR. In this application, Hamilton wrote that "as a result of two line of duty injuries to my left knee, I suffer from instability, chronic swelling and inflammation. I have difficulty walking up and down the

Dated: 1/5/22



HON. LYNN R. KOTLER, J.S.C.

1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
2. Check as appropriate: Motion is GRANTED DENIED GRANTED IN PART OTHER
3. Check if appropriate: SETTLE ORDER SUBMIT ORDER DO NOT POST
- FIDUCIARY APPOINTMENT REFERENCE

stairs. Therefore, I am unable to perform as a full duty NYC police detective..." Simultaneously, the Police Commissioner started a medical survey on Hamilton's behalf to see whether he may also be eligible for Ordinary Disability Retirement ("ODR").

On July 7, 2020, the Police Pension Fund ("PPF") Medical Board interviewed and examined Hamilton in connection with his ODR and ADR applications. Following this examination, the Medical Board submitted a report to the PPF Board of Trustees ("BOT") in which it stated:

Based on the review of the history, the medical records, the medical evidence submitted, the clinical findings, the symptomology, and today's examination, the Article II Medical Board finds that the detective is permanently disabled and unable to perform the full duties of a New York City Police Officer. In light of this, the Article II Medical board recommends approval of the detective's own application for Accident Retirement Disability and disapproval of the Police Commissioner's application for Ordinary Disability Retirement. The final diagnosis is Progressive High-grade Partial to Full thickness Chondral Loss, Anterior Cruciate Ligament Laxity. The competent causal factor is the line of duty injury of April 10, 2019.

The BOT considered the recommendation of the PPF Medical Board during its meeting on November 9, 2020. At that meeting, the BOT supposedly considered the March 19, 2002 incident only to the extent that it stated "the member did have a preexisting condition and had had a knee surgery as a result of an accident where he was hit by a car... however that was not found to be the competent causal factor of the incident..." Instead, the BOT focused on the 2019 incident. It determined that the 2019 incident was exertional rather than accidental, and therefore should not qualify for ADR. At the following BOT meeting on December 19, 2020, the 12-member BOT denied Hamilton's ADR application in a six-six tie. Thereafter, Hamilton withdrew the ODR application and took a service retirement.

This Article 78 petition ensued, wherein petitioner seeks an order: 1) annulling the BOT's 11/09/20 determination pursuant to CPLR § 7803(3) because the BOT's determination was arbitrary and capricious; 2) directing respondents to retire the petitioner with an accident disability retirement allowance retroactive to the date of his service retirement, as a matter of law; 3) in the case that the court does not order the BOT to retire the petitioner as a matter of law, remanding petitioner's ADR application to the BOT for reconsideration; and 4) directing respondents, pursuant to CPLR §2307(a), to serve all documents, copies of minutes of BOT meetings, copies of medical records, NYPD medical authorizations, and sick history reports that are related to the petitioner's ADR application, and for copies of the Article II Police Fund Rules and the Police Surgeons' Manual.

Respondents contend that the BOT's determination was supported by credible evidence and was made in accordance with the applicable law. They also argue that the determination is not in violation of the Constitution or any other applicable law or regulation. Finally, respondents claim that the request for documentation pursuant to CPLR § 2307(a) is moot because that documentation was provided and was annexed to the Verified Answer.

Discussion

At the outset, petitioner's request to order the respondents, pursuant to CPLR §2307(a), to serve all documents, copies of minutes of BOT meetings, copies of medical records, NYPD medical authorizations, and sick history reports that are related to the petitioner's ADR application, and for copies of the Article II Police Fund Rules and the Police Surgeons' Manual is denied as moot since the information petitioner seeks has been provided vis-à-vis respondent's verified answer and petitioner does not argue on reply that any information/documents have not yet been provided. The court now turns to the balance of the petition.

The court will first consider Hamilton's request to annul the BOT determination pursuant to CPLR § 7803(3). Hamilton argues that the determination should be annulled because the BOT acted in an arbitrary and capricious fashion.

ADR is available to an NYPD officer when a medical examination demonstrates that the officer is physically or mentally incapacitated from the performance of duty and ought to be retired, and that the disability is a natural and proximate result of that officer's service, and that such alleged disability was not the result of willful negligence on the part of the officer (NYC Admin Code 13-252; *Matter of Lang v. Kelly*, 2011 NY Slip Op 31279(U) [Sup. Ct. New York County 2011]). Such a determination is made by the BOT upon recommendation of a Medical Board (NYC Admin Code 13-252).

When a Medical Board finds an employee disabled for performance of duty, and the BOT denies an application for ADR by a tie vote on the issue of causality, the court may overrule the BOT and grant the application as a matter of law (*See Matter of Baranowski v. Kelly*, 95 AD3d 746 [1st Dept 2012]). However, if there was "any credible evidence of lack of causation" before the BOT, its determination must stand (*id.*; *Meyer v. Bd. of Trs. of the N. Y. City Fire Dep't, Article 1-B Pension Fund*, 90 NY2d 139 [1997]). A court may annul and remand a case when the medical evidence is insufficient to sustain the determination (*Matter of Kiess v. Kelly*, 75 AD3d 416 [1st Dept 2010]).

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). An agency abuses its exercise of discretion if it lacks a rational basis in its administrative orders. "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974] [emphasis removed]; *see also Matter of Colton v. Berman*, 21 NY2d 322, 329 [1967]).

A Medical Board's determination is arbitrary or capricious and irrational if it is not based on "some credible evidence" (*see Matter of Borenstein v New York City Empls.' Retirement Sys.*, 88 NY2d 756 [1996]). "[C]redible evidence is evidence that proceeds from a credible source and reasonably tends to support the proposition for which it is offered" (*Matter of Meyer v Board of Trustees of the N. Y. City Fire Dept., Art. 1-B Pension Fund*, 90 NY2d 139 [1997]). "[I]t must be evidentiary in nature and not merely a conclusion of law, nor mere conjecture or unsupported suspicion" (*id.*). "[A]n articulated, rational, and fact-based medical opinion" constitutes "credible evidence" (*id.*). The Medical Board's "detailed and fact-based report . . . explaining the basis for its conclusion . . . constitute[s] credible evidence" (*id.*). A determination is arbitrary and capricious and irrational when that determination is conclusory without any rationale (*see, Brady v New York*, 22 NY2d 601 [1968] [remitting the determination back to the BOT where it had relied upon a conclusory report of the medical board]). It is appropriate to remand the matter to the Medical Board for further review where the Medical Board's finding is conclusory or not adequately explained in light of the medical evidence adduced (*see generally Matter of Meyer v Board of Trustees*, 90 NY2d 139 [1997]; *Matter of Rodriguez v Board of Trustees*, 3 AD3d 501 [2004]).

Hamilton argues that the BOT's determination is arbitrary and capricious for three reasons: 1) because the Medical Board failed to articulate the basis for its etiological conclusion; 2) because the Medical Board did not consider the 2002 incident as the causal factor for of the disability; and 3) because the Medical Board failed to follow its own regulations. Hamilton then argues that based upon the arbitrary and capricious actions of the BOT, court intervention is appropriate.

Respondents contend that there is no reason to believe that the 2002 incident may have been the cause of the disability, as Petitioner had been working full duty for at least thirteen years after recovering from his 2002 injury and before he re-injured his left knee. They also claim that Hamilton never asserted that the 2002 incident ought to have been considered as the causal factor of the disability in his

ADR application, and therefore that Hamilton ought to be barred from raising this defense on appeal. The court is not persuaded by the respondents' arguments.

The court agrees with petitioner that the Medical Board failed to articulate the basis for its etiological conclusion. Hamilton submitted documentation that demonstrated that he suffered from chronic symptomology in his left knee following the 2002 incident. Despite this, the Medical Board failed to consider whether the 2002 incident caused petitioner's disability and provided no rationale regarding its conclusion that the 2019 incident was the causal factor of his disability. Based upon this lack of rationale, the petitioner argues that it is impossible to know what basis, if any, the Medical Board used in arriving at its determination, aside from its own conjecture and unsupported suspicion. The court agrees.

While the report issued by the Medical Board acknowledges the evidence that was provided by Hamilton it does not articulate the rationale for its etiological conclusion. Contrary to the respondents claim, Hamilton asserted that the 2002 incident ought to have been considered as a causal factor in his original ADR application. In that application, Hamilton cited both the 2002 and the 2019 incident as causal factors of his disability, stating "as a result of two line of duty injuries to my left knee, I suffer from instability, chronic swelling and inflammation..." Hamilton also submitted documentation of the 2002 incident to support his assertion of causality between that incident and the disability, including the line of duty report, the subsequent x-ray and subsequent doctor reports from his treating physician, Dr. Answerth Allen. Yet the Medical Board does not confront the potential causality of the 2002 incident, nor does it articulate any explanation as to why it eschewed that incident as a potential causal factor in Hamilton's disability.

The respondents argue that the Medical Board acted appropriately when it did not consider the 2002 injury as a causal factor because petitioner had been working full duty for at least thirteen years after recovering from that injury. The court declines to consider whether or not the time gap between the 2002 incident and the disability is an appropriate rationale for dismissal of that incident as a causal factor. Rather, the court observes that respondents make this argument in their answering papers, but that no such justification for dismissal of the incident exists in the report of the Medical Board. Respondents cannot now attempt to retroactively justify the decision. The Medical Board failed to detail any basis for its denial of the 2002 incident as a causal factor. In fact, the Medical Board's entire discussion of causality is just one sentence; "the competent causal factor is the line of duty injury of April 10, 2019." The Medical Board's failure to provide any rationale for its determination of causality is therefore irrational. Accordingly, the determination of the Medical Board is arbitrary and capricious.

Furthermore, the meeting minutes from the November 9, 2020 BOT meeting demonstrate that the Medical Board's irrational causality determination was adopted by the BOT. In that meeting, Mr. Dorsa, a trustee and representative of the New York City Comptroller's Office, stated that "the member [Hamilton] did have a preexisting condition and had had knee surgery as a result of an accident where he was hit by a car in January of 2003; however, that was not found to be the competent causal factor of the incident with the member bending over to pick up boxes, and we deem that that is an exertional injury rather than an accident..." Although the BOT was not bound by the Medical Board's determination, it adopted the Medical Board's determination, and gave no consideration to the 2002 incident. Therefore, the BOT determination was similarly irrational. Thus, the BOT determination denying the petitioner's ADR application was also arbitrary and capricious.

Since the court finds that the BOT's determination was arbitrary and capricious, said determination must be annulled pursuant to CPLR §7803 (3). The court must next consider petitioner's request to order the respondents to retire him with an accident disability retirement allowance retroactive to the date of his service retirement, as a matter of law. When an ADR application is denied via a tied vote by the BOT, a court may grant the application as a matter of law (*Matter of Baranowski v. Kelly*, 95 AD3d 746 [1st Dept 2012]). However, for this to happen, the court must be able to conclude, as a matter of law, that a petitioner's disability is the natural and proximate result of a service-related accident (*Matter of Dement v. Kelly*, 97 AD3d 223 [1st Dept 2012]). Upon review of petitioner's submissions, none of these

submissions explicitly tie his disability to the 2002 incident. Therefore, petitioner has failed to come forward with proper proof which would warrant a determination as a matter of law. Accordingly, that branch of the petition is denied and the matter remanded to the Medical Board and BOT to reassess in accordance with this decision.

In accordance herewith, it is hereby

ORDERED that the petition is granted to the extent that the determination made by the Board of Trustees of the New York City Police Pension Fund Article II in which it denied petitioner, Earl Hamilton's Accident Disability Retirement is annulled; and it is further

ORDERED that the petitioner Earl Hamilton's Accident Disability Retirement application is remanded to the Medical Board and the Board of Trustees of the New York City Police Pension Fund Article II for reconsideration in accordance with this decision; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated:

1/5/22
New York, New York

So Ordered:



Hon. Lynn R. Kotler, J.S.C.