

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

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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HARRIS SIDERAKIS,

Plaintiff,

- v -

EDWARD CABAN, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY POLICE PENSION FUND, ARTICLE II,
DOROTHY KUNSTADT, LAWRENCE SCHARER,
LAWRENCE REDUTO, RAYA IBRAGIMOV

Defendant.

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INDEX NO. 159017/2023

MOTION DATE 09/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the petition is granted in part.

The Court agrees with petitioner that the Medical Board’s failure to discuss Dr. Gregory Fried’s submissions in its September 9, 2022, findings denying the petitioner Accidental Disability Retirement was a violation of the Medical Board’s own procedures and renders the determination of the Board arbitrary and capricious. The decision of the Board of Trustees not to remand back to the Medical Board was therefore likewise arbitrary and capricious.

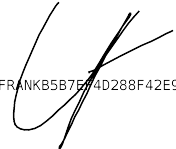
It is also concerning that the minutes of the meeting of the Board of Trustees denying the petitioner benefits, one of the trustees misstated that legal standard with regard to benefits under the Heart Bill. Moreover, that same trustee was incorrect as to when Dr. Fried’s report was presented. As both sides in this litigation agree, the standard for the Board of Trustees was that the petitioner’s condition, that of cardiopathic hypertrophy, was presumptive evidence that the disability was related to the stress of her NYPD employment.

The Court declines to mandate an outcome in this matter. The Court feels it is more appropriate to remand this matter so that a full review and record can be obtained. It is therefore

ORDERED that the action of the respondents herein denying petitioner a line of duty accident disability retirement allowance pursuant to the GMU §207-k (the Heart Bill) is hereby annulled; and it is further

ORDERED that the matter is remanded to the Board of Trustees of the Article II Pension Fund for further consideration, including but not limited to review and consideration of and required response to the submissions on petitioner’s behalf by Dr. Gregory Fried; and it is further

ORDERED that on such remand, that the respondents apply the correct legal standard, which is that the petitioner’s medical condition is presumptive evidence that the condition is related to the stresses of petitioner’s service as a New York City Police Officer.

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4/9/2024
DATE

LYLE E. FRANK, J.S.C.

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