

Matter of Ploss v Kelly
2014 NY Slip Op 00430 [113 AD3d 531]
January 23, 2014
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, March 5, 2014

In the Matter of Jacqueline Ploss, Appellant,
v
Raymond Kelly et al., Respondents.

—[*1] Jeffrey L. Goldberg, P.C., Port Washington (Jeffrey L. Goldberg of counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York (Keith M. Snow of counsel), for respondents.

Judgment, Supreme Court, New York County (Geoffrey D.S. Wright, J.), entered July 25, 2012, denying the petition to annul respondents' denial of accidental disability retirement (ADR) benefits, dated October 12, 2011, and dismissing the proceeding brought pursuant to CPLR article 78, unanimously reversed, on the law, without costs, the judgment vacated, the petition to annul the determination granted, and the matter remanded to respondents for further proceedings.

Respondents failed to overcome the presumption of causation of General Municipal Law § 207-k by failing to cite objective medical evidence to support the finding that decedent's ventricular arrhythmia and tachycardia induced cardiomyopathy were not caused by job-related stress. Decedent's cardiologist attributed decedent's increased catecholamines to job stress, which impacted his heart condition. The Medical Board, which noted other possible causes of decedent's heart ailment, failed to cite competent and credible evidence which rebutted the conclusion of decedent's cardiologist, and merely pointed to gaps in petitioner's evidence, which is insufficient (*see Matter of Ginther v Kelly*, 109 AD3d 738, 739 [1st Dept 2013]). Concur—Tom, J.P., Acosta, Andrias, Freedman and Feinman, JJ.