

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

PRESENT: HON. PHAEDRA F. PERRY-BOND

PART

35

Justice

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In the Matter of the Application of

INDEX NO. 165532/2025ELLEN O'DONNELL, as widow and beneficiary of
LAWRENCE O'DONNELL, deceasedMOTION DATE 11/29/2025MOTION SEQ. NO. 001

Petitioner,

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

- v -

ROBERT S TUCKER¹, as the Acting Fire Commissioner of
the City of New York and as Chairman of the Board of
Trustees of the New York City Fire Department Article I-B
Pension Fund, BOARD OF TRUSTEES OF THE NEW
YORK CITY FIRE DEPARTMENT ARTICLE 1-B PENSION
FUND, and CHARLES LAMARCA, M.D., PETER R.
NEUMANN, M.D., LAWRENCE SHARER, M.D., and
JEFFREY MISKOFF, D.O. in their capacity as THE
MEDICAL BOARD of the New York City Fire Department,
Article I-B Pension Fund,

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 70
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the amended petition is granted to the extent that
respondents' July 30, 2025 determination denying petitioner's application for a WTC line of duty
death benefit is annulled, and respondents are directed to grant petitioner's application for a WTC
line of duty death benefit arising from the death of her husband, retired firefighter Lawrence
O'Donnell ("Decedent") and to pay petitioner such death benefits retroactive to the time of
Decedent's death, and the remainder of the petition is denied as moot.

¹ Lillian Bonsignore assumed the position of fire commissioner on January 6, 2026.

I. Background

Petitioner married Lawrence O'Donnell (the "Decedent") on May 10, 1986. Shortly thereafter, in August of 1986, Decedent began serving as a firefighter with FDNY and continued doing so until he retired on July 29, 2003. On September 11, 2001, Decedent responded to the terrorist attacks on the World Trade Center ("WTC") as a rescuer, and continued to work in rescue, recovery, and clean up operations at the WTC almost every day until September 12, 2002.

Petitioner and Decedent remained married until Decedent's death on June 29, 2024. Decedent's death certificate states the immediate cause of death as acute hypoxic respiratory failure which was a consequence of long standing chronic pulmonary issues. Petitioner alleges that Decedent's death was caused by his heightened susceptibility to pulmonary infection and reduced lung volume caused by his exposure to WTC toxins. On July 16, 2024, petitioner filed a WTC line of duty death benefit application with the respondent Board of Trustees of the New York City Fire Department Article 1-B Pension Fund (the "Board of Trustees").

On October 10, 2024, respondents Charles LaMarca M.D., Peter Neumann, M.D., and Lawrence Scharer, M.D., serving as the Medical Board of the New York City Fire Department Article 1-B Pension Fund (the "Medical Board") issued a report opining that Decedent's death was not caused by any lung condition related to his rescue and recovery efforts at the WTC, but was instead caused by a congenital condition that led to the breakdown of multiple body functions. Specifically, the Medical Board noted that Decedent was previously diagnosed and being treated for glycine receptor progressive encephalitis, rigidity, and myoclonus (also known as "PERM") with symptoms including seizures, poor motor control, and worsening cognitive function. The Medical Board reviewed prior medical records which stated Decedent had no history of asthma and his lungs were clear. The Medical Board recommended denying petitioner a WTC line of duty

death benefit. Petitioner argues that the Medical Board's conclusion failed to discuss or analyze a lengthy history of Decedent's chronic pulmonary issues. After the October 10, 2024 report, the Board of Trustees remanded petitioner's application to the Medical Board for re-evaluation.

The Medical Board then issued another report dated May 15, 2025 and again opined that Decedent's death was not caused by WTC related toxins. The Medical Board noted a letter from Alec Friedman, MD, Decedent's neuro immunology doctor at Columbia University Irving Medical Center who stated that Decedent experienced pulmonary symptoms dating back to at least 2013. The Medical Board further noted a letter from Dr. Samir Alkhuja, MD dated November 7, 2024, wherein Dr. Alkhuja stated Decedent had longstanding lung disease related to WTC dust, but the Medical Board stated it had no evidence or documentation that Dr. Alkhuja's opinion is true. The Medical Board also noted an exam of Decedent on February 11, 2024 by Dr. David Prezant of the FDNY Medical Department wherein Dr. Prezant found Decedent's pulmonary function tests 100% normal and CT scans showed no significant disease related to WTC exposure. On July 30, 2025, the Board of Trustees adopted the Medical Board's May 15, 2025 report and denied petitioner's application for WTC line of duty death benefits.

Petitioner commenced this Article 78 proceeding on November 29, 2025, and subsequently amended her petition on February 14, 2026. Petitioner asks the Court to annul the July 30, 2025 determination which denied her application for WTC line of duty death benefits, to direct respondents to grant her application for WTC line of duty death benefits, or alternatively directing that petitioner's application be remanded for reconsideration. Petitioner argues that the May 15, 2025 report ignored important evidence placed before it. Petitioner argues that Dr. Friedman's letter noted Decedent's history of granuloma which medical literature has linked to WTC toxin exposure, and Dr. Friedman further noted that Decedent was unable to tolerate PERM treatment

due to his pulmonary conditions. Dr. Friedman wrote that Decedent had multiple pneumonias and acute respiratory failure events which required hospitalization and intubation throughout treatment which is not typically seen in PERM patients. Dr. Friedman wrote these events caused immunotherapy interruptions which contributed to Decedent's neurologic decline and his respiratory failure. Petitioner argues this evidence was left unaddressed by Respondents.

Petitioner further argues that chest x-rays prior to 9/11 showed Decedent's lungs were healthy, but an x-ray from November 19, 2002 noted a nodule on Decedent's lungs, followed by a CT exam on July 29, 2010 which shows 2 pulmonary nodules, and a chest CT scan in June 16, 2011 showing 4 or 5 pulmonary nodules. Petitioner also claims the Medical Board failed to address a February 1, 2013 chest x-ray which showed pneumonia and a December 13, 2013 Chest CT scan noting shortness of breath and bilateral atelectasis – which is the medical term for a lung collapsing or deflating. Petitioner highlights an October 7, 2018 CT scan which showed suspected multifocal pneumonia, and an October 19, 2018 CT scan which showed atelectasis in the right and left lung coupled with dense nodules. A November 5, 2018 FDNY Bureau of Health Services examination report also noted Decedent's complaints regarding shortness of breath and a history of chronic coughing with recurrent bronchitis and pneumonias, and on January 31, 2019, Decedent was prescribed a rescue inhaler.

Petitioner further claims the Medical Board also ignored a February 11, 2024 letter from Dr. Halina White, an assistant professor of neurology at Weill Cornell, who stated that the cause of Decedent's PERM was unknown, and it could be related to prior smoke exposure resulting from his job as a fireman or from a prior infection. Petitioner claims that the Medical Board failed to explain why it concluded Decedent's PERM was congenital and unrelated to WTC toxin exposure without citing to any literature when Dr. White, a neurologist, stated Decedent's PERM could be

caused by environmental factors. Dr. Sara F. Wesley, an Assistant Professor of Neurology at Columbia University College of Physicians & Surgeons likewise wrote in a letter dated February 20, 2024 that Decedent was her patient and it could not be stated for certain that Decedent's PERM diagnosis is not related to Decedent's "significant workplace exposures in the fire department, including serving at Ground Zero when the twin towers fell on 9/11."

Petitioner argues that under New York City Administrative Code Section 13-353.1, also known as the "WTC Presumptive Bill" a firefighter who retired on a disability retirement less than 25 years ago and who dies from a qualifying World Trade Center condition will be deemed to have died as a natural and proximate result of an accident sustained in the line of duty, unless the contrary can be proven by competent evidence. Petitioner argues that conclusory Medical Board reports which disregard the opinions of treating physicians attributing a firefighter's death to WTC exposure fail to rebut the WTC presumption. Petitioner claims that given the heavily documented evidence of Decedent's pre-existing pulmonary issues, the Medical Board's conclusion that "there is no documentary or clinical evidence that the member suffered from respiratory disorder" is arbitrary and capricious. Petitioner further argues the Medical Board ignored that Decedent's susceptibility to pulmonary infections accelerated his PERM symptoms and interrupted his immunotherapy treatments. Finally, petitioner argues that the Medical Board's conclusion is contradicted by the death certificate itself, which stated Decedent's respiratory failure was "due to or as a consequence of longstanding chronic pulmonary issues." In opposition, respondents argue that the Medical Board's conclusion was supported by competent and credible evidence and that the Medical Board is entitled to resolve any conflicting evidence.

II. Discussion

The petition is granted in part and is otherwise denied as moot. In an Article 78 proceeding, judicial review is limited to determining only whether an administrative decision is arbitrary and capricious, an abuse of discretion, or affected by error of law (*Slesinger v Department of Housing Preservation and Development of City of New York*, 39 AD3d 246 [1st Dept 2007]).

Pursuant to New York City Administrative Code § 13-252.1:

“[i]f a retiree who: (1) has met the criteria of subdivision one of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and (2) has not been retired for more than twenty-five years; and (3) dies from a qualifying World Trade Center condition, as defined in section two of the retirement and social security law, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part. Such retiree's eligible beneficiary, as set forth in section 13-244 of this subchapter, shall be entitled to an accidental death benefit as provided by section 13-244 of this subchapter”

Pursuant to Retirement and Social Security Law (“RSSL”) § 2(36)(c), a “qualifying physical condition” for WTC line of duty death benefits includes, amongst other things:

“(i) diseases of the upper respiratory tract and mucosae, including conditions such as rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, and upper airway hyper-reactivity, or a combination of such conditions; (ii) diseases of the lower respiratory tract, including but not limited to tracheo-bronchitis, bronchitis, chronic obstructive pulmonary disease, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic”.

Once an applicant satisfies the requirements of RSSL § 2(36)(c) and NYC Administrative Code § 13-252.1, the burden is on the pension fund to show the claimant’s qualifying condition was not caused by WTC site hazards (*see Bitchatchi v Board of Trustees of New York City Police Dept. Pension Fund*, 20 NY3D 268, 276 [2012]). The pension fund must meet its burden through “credible evidence” which is evidence that comes from a credible source, reasonably tends to

support the proposition for which it is offered, and cannot be conclusory, conjecture or unsupported suspicion (*Bitchatchi, supra* at 281). The pension fund must come forward “with affirmative evidence to disprove causation” and “cannot deny ADR benefits by relying solely on the absence of evidence tying the disability to the exposure” (*id.* at 282).

Even where there may be a concurrent cause of a disabling condition that is unrelated to WTC site hazards, so long as the pension board fails to refute the proposition that the disabling condition “was at least in part attributable to his 9/11 rescue work” line of duty benefits should be awarded (*see Dement v Kelly*, 97 AD3d 223, 231 [1st Dept 2012] [Manzanet-Daniels, J.]). Moreover, “if an accidental line-of-duty injury precipitated the develop a latent condition or aggravated a preexisting condition, resulting in disability, the applicant is entitled to a line-of-duty disability pension” (*Dement, supra* at 232 citing *Matter of Tobin v Steisel*, 64 NY2d 254 [1985]).

The evidence demonstrates, as a matter of law, that Decedent suffered a WTC-related injury which, at a minimum, exacerbated his PERM symptoms and ultimately resulted in his death. The record is clear that prior to the year Decedent spent engaging in search, rescue, and clean up operations at Ground Zero, Decedent’s lungs were healthy. However, in November of 2002, just months after Decedent stopped working at Ground Zero, radiology exams consistently showed multiple granuloma nodules in Decedent’s lungs. Further studies throughout the 2010s, years prior to Decedent’s PERM diagnosis, showed Decedent had recurring pneumonia and that his lungs were partially collapsed or deflated. Decedent also frequently complained about shortness of breath, had a history of chronic cough, recurring bronchitis, and prior to his PERM diagnosis was prescribed an emergency inhaler.

Decedent’s treating physicians noted the presence of granulomas in his lungs which medical literature has attributed to being caused by exposure to WTC toxins. The treating

physicians further noted that after being diagnosed with PERM, Decedent experienced multiple pneumonias and acute respiratory failure events which required hospitalization and intubation throughout treatment which is not typically seen in PERM patients. From January of 2024 until at least March of 2024, just months prior to his death, Decedent was treating for sepsis caused by pneumonia. These events, according to Decedent's treating physicians, interrupted his PERM treatment and hastened his death. While PERM was noted on the death certificate as a cause of Decedent's respiratory failure, the death certificate also attributed Decedent's "Long Standing Chronic Pulmonary Issues" as a cause.

Despite all this evidence, including the presence of a granuloma as early as November 18, 2002, the Medical Board's May 15, 2025 report states in conclusory fashion that "member was diagnosed with a congenital condition that led to the breakdown of multiple functional functions [*sic.*] which is the ultimate cause of his death." The report states nothing of the multiple treating physician letters identifying the impact of Decedent's prior pulmonary issues on the treatment for his congenital condition, nor does it explain why the Medical Board believes PERM was a congenital condition when Decedent's physicians, who are specialists at Columbia University and Weill Cornell, stated that they themselves could not conclude Decedent's PERM is unrelated to his WTC rescue work. The Medical Board also failed to address the Decedent's death certificate attributing a cause of his respiratory failure to his "Long Standing Chronic Pulmonary Issues."

Given this record, the Medical Board utterly failed to meet its burden of showing through affirmative evidence that Decedent's death was caused entirely by non-WTC related conditions (*see Dement v Kelly*, 97 AD3d 223, 230-232 [1st Dept 2012]). The Medical Board failed to cite any credible evidence attributing Decedent's PERM to congenital, rather than environmental causes (*see also Sheldon v Kelly*, 126 AD3d 138, 142-144 [1st Dept 2015]). Even if the PERM

diagnosis was congenital, the Medical Board failed to show any credible evidence establishing affirmatively that Decedent's PERM was not exacerbated, and his death was not hastened, due to Decedent's documented history of granuloma nodules, pneumonia, and other pulmonary related issues attributable to the year he spent rescuing and cleaning at Ground Zero (*Tobin v Steisel*, 64 NY2d 254, 257 [1985]). The Medical Board fails to provide any alternative cause to the long history of respiratory issues experienced by Decedent prior to his PERM diagnosis (*see also Samadjopoulos v New York City Employee's Retirement System*, 104 AD3d 551, 552-553 [1st Dept 2013]). The Medical Board cannot rebut the WTC presumption by relying on deficiencies to fill its own gap in proof (*Sheldon, supra* at 143-144 citing *Bitchatchi v Board of Trustees of New York City Police Dept. Pension Fund*, 20 NY3d 268, 282 [2012]).

The respiratory issues experienced by Decedent did not exist prior to his work at the WTC site, and the Medical Board even cites to the studies demonstrating this fact. Yet, they provide no explanation for the granulomas, breathing issues, and multiple episodes of pneumonia Decedent began to experience shortly after his year spent at Ground Zero. On this record, the Medical Board did not "resolve conflicting evidence" but instead completely ignored the medical evidence before it, not least of which was the death certificate attributing the cause of respiratory failure to "Long Standing Chronic Pulmonary Issues." Well established binding precedent is abundantly clear that Respondents cannot meet their burden of rebutting the WTC presumption by ignoring medical evidence or speculating as to other causes of a disabling medical condition while failing to cite to the medical literature or data in support of the Medical Board's conclusions (*see Ginther v Kelly*, 109 AD3d 738, 739 [1st Dept 2013]).

Therefore, the amended petition is granted to the extent that that respondents' July 30, 2025 determination denying petitioner's application for a WTC line of duty death benefit is annulled,

and respondents are directed to grant petitioner's application for a WTC line of duty death benefit arising from the death of her husband, retired firefighter Lawrence O'Donnell, and to pay petitioner such death benefits retroactive to the time of her husband's death. In light of the Court directing respondents to grant petitioner's application for a WTC line of duty death benefit, the branch of the petition which sought, in the alternative, for petitioner's application to be remanded to the medical board for further consideration is denied as moot.

Accordingly, it is hereby,

ORDERED, ADJUDGED, and DECREED that the amended petition is granted to the extent that respondents' July 30, 2025 determination denying petitioner's application for a WTC line of duty death benefit is vacated and annulled, and within sixty days of this Decision and Order, respondents are hereby ordered to grant petitioner's application for a WTC line of duty death benefit arising from the death of her husband, retired firefighter Lawrence O'Donnell and to pay petitioner such death benefits retroactive to the time of Lawrence O'Donnell's death; and it is further

ORDERED and ADJUDGED that the remainder of the amended petition is denied as moot; and it is further

ORDERED that within ten days of entry, counsel for petitioner shall serve a copy of this Decision and Order, with notice of entry, on all parties via NSYCEF.

This constitutes the Decision and Order of the Court.

9/10/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

☒ CASE DISPOSED
☐ GRANTED ☐ DENIED

☐ NON-FINAL DISPOSITION

APPLICATION:

☐ SETTLE ORDER

☒ GRANTED IN PART

☐ OTHER

CHECK IF APPROPRIATE:

☐ INCLUDES TRANSFER/REASSIGN

☐ SUBMIT ORDER

☐ FIDUCIARY APPOINTMENT

☐ REFERENCE