

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M-----X
MEENAWATTI CICCONE,

INDEX NO. 161200/2024

Petitioner,

MOTION DATE 12/05/2024

- v -

MOTION SEQ. NO. 001

THOMAS G DONLON, THE BOARD OF TRUSTEES OF
THE NEW YORK CITY POLICE PENSION FUND,
ARTICLE II

Respondent.

DECISION + ORDER ON
MOTION-----X
HON. NICHOLAS W. MOYNE:The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 23, 24, 25, 27,
28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Upon the foregoing documents, it is

In this CPLR Article 78 proceeding, petitioner Meenawatti Ciccone, a retired New York City Police Officer, seeks to annul the September 10, 2024 determination of the Board of Trustees of the New York City Police Pension Fund ("the Board"), which denied her application for Accidental Disability Retirement ("ADR") benefits in consequence of a 6-6 tie vote. The petitioner requests that this Court award ADR benefits as a matter of law, retroactive to the date of her ordinary disability retirement.

For the reasons set forth below, the petition is granted.

The material facts surrounding the petitioner's line-of-duty injury were outlined in the Court's previous decision and are undisputed. On August 31, 2019, Officer Ciccone and her partner responded to a radio run regarding a stolen cell phone that was pinging via GPS to the backyard of a private dwelling at 1540 Schenectady Avenue in Brooklyn. It is uncontested that the petitioner had never visited this location before. While in the backyard, Officer Ciccone canvassed the ground and shrubbery for the missing phone. As she walked backward while scanning the area, she fell into a two-step, recessed, concrete stairwell. Photographic evidence in the administrative record clearly establishes that the stairwell was flush to the ground and entirely lacked a guardrail on the side into

which the petitioner fell (NYSCEF Doc. No. 1 at ¶¶ 9-13; NYSCEF Doc. No. 30 at ¶ 20). The Medical Board subsequently determined that the petitioner is permanently disabled as a natural and proximate result of the ruptured Achilles tendon sustained in this fall (NYSCEF Doc. No. 1 at ¶ 20).

On April 8, 2024, this Court remanded the Board's initial denial of ADR benefits (Index No. 155142/2023). In that prior Decision and Order, the Court noted that the Board had evaluated the case "primarily, if not exclusively" on whether the stairwell was "readily observable" in the daylight, while failing to properly weigh the unfamiliarity of the location, the nature of the task, and the critical lack of a guardrail (NYSCEF Doc. No. 16 at 5-6).

Upon remand, the Board considered the application at its September 10, 2024 meeting (NYSCEF Doc. No. 45). However, the City Trustees explicitly stated that they possessed an "absence of any new factual information" and proceeded to deny the application by utilizing the exact same factual record (NYSCEF Doc. No. 45 at 28). The City Trustees articulated three legal justifications for their denial: (1) that police work inherently involves responding to unfamiliar locations; (2) that investigating a stolen cell phone is a routine police activity; and (3) that even if a guardrail had been present, the petitioner "could very well have fallen over the top of it and suffered the same injury." (NYSCEF Doc. No. 45 at 30-32). The resulting 6-6 tie vote denied the ADR application.

This Court is acutely mindful of the highly deferential standard of review applied to a tie-vote denial by the Board of Trustees. When an application for ADR is denied by a 6-6 vote, a reviewing court must uphold the Board's determination if there is "some credible evidence" to support the conclusion that the disability was not the result of a service-connected accident (*Matter of Borenstein v. New York City Empls. Ret. Sys.*, 88 NY2d 756, 760 [1996]). The court may not set aside the denial unless it can be determined "as a matter of law on the record that the disability was the natural and proximate result of a service-related accident." (*Matter of Meyer v. Bd. of Trs.*, 90 NY2d 139, 145 [1997]; *Matter of Canfora v. Bd. of Trs.*, 60 NY2d 347, 351 [1983]).

However, judicial deference is not abdication. While the Board is the ultimate evaluator of facts, its legal conclusions must not be arbitrary, capricious, or rooted in fundamentally flawed interpretations of binding Court of Appeals precedent. Where the undisputed facts of an incident establish a qualifying accident under the law, and the Board's denial relies solely on legally invalid reasoning and conjecture, the Court is empowered—and obligated—to award ADR benefits as a matter of law (*see Matter of McCambridge v. McGuire*, 62 N.Y.2d 563, 568 [1984]).

The term "accident" is not expressly defined in the Administrative Code, but the Court of Appeals has long defined an accident for pension purposes as a "sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact." (*Matter of Lichtenstein v. Board of Trustees of Police Pension Fund of Police Dept. of City of NY*, 57 NY2d 1010, 1012 [1982]) Crucially, an injury that occurs as the result of activity undertaken in the performance of ordinary employment duties, considered in view of the particular employment in question, does not qualify as an accident (*see id.*). A fall down a flight of stairs as a result of one's own misstep, without more, has been held not to be the sort of out-of-the ordinary or unexpected event that would constitute an accidental injury as a matter of law (*see Matter of Starnella v. Bratton*, 92 NY2d 836, 839 [1998]). However, as this Court has previously found, inattention and mere missteps are distinguishable and a fall caused by inattention may be an accident if the inattention results in a person failing to observe a dangerous condition such as a slippery, wet or uneven surface (*see Matter of Ciccone v Sewell*, 2024 WL 1510681 [Sup Ct. NY County 2024]). This can be true, under certain circumstances, even if the condition would have been readily observable had the injured party paid proper attention. So long as the injury-causing event can fairly be said to be sudden, unexpected, and not a normal risk of the work performed, it is immaterial whether it was hidden or not observable before the accident (*see Matter of Kelly v DiNapoli*, 30 NY3d 674, 685 n3 [2018]; *Starnella*, 92 NY2d at 839; *Matter of Pratt v Regan*, 68 NY2d 746, 747-748 [1986]; *Matter of McCambridge v McGuire*, 62 NY2d 563, 568 [1984]).

The respondents' reliance on the routine nature of the petitioner's assignment—searching for a stolen cell phone—directly contradicts the highest court's mandate in *Matter of McCambridge*. In *McCambridge*, the Court of Appeals explicitly held that an injury may be accidental even if sustained during the performance of regular duties. The Court stated clearly: "It is the *precipitating cause of the injury*, rather than the job assignment at the time, that determines entitlement to accidental disability benefits" (*McCambridge*, 62 NY2d at 567) [emphasis added]). The respondents' argument that the injury is not an accident because the petitioner was executing a routine police activity (NYSCEF Doc. No. 45 at 31) relies on a legal standard that the Court of Appeals expressly abolished forty years ago. The precipitating cause of the injury here was an unguarded drop-off, not the routine act of looking for a phone.

The respondents rely heavily on First Department precedents holding that encounters with readily observable hazards do not constitute accidents (*see McCarten v. Shea*, 211 AD3d 534, 535 [1st Dept 2022]; *Chaplar v. Sewell*, 222 AD3d 478 [1st Dept 2023]). However, as the petitioner correctly argues, those cases involve hazards that were observable to an officer looking forward in a

familiar or navigable environment. Here, the undisputed record demonstrates that the petitioner was walking *backward* in a completely unfamiliar location and stepped into a recess that was flush to the ground. This Court finds the circumstances remarkably analogous to *Matter of Finazzo v. Safir* (273 AD2d 75 [1st Dept 2000]), where an officer stepping into a construction hole was deemed an accident as a matter of law, and *Matter of Flannelly v. Bd. of Trs.* (278 AD2d 113 [1st Dept 2000]), where tripping over unexpectedly placed wires was deemed an accident. While the City invokes *Santiago v. O'Neill* (185 AD3d 494) to argue that unfamiliar staircases are a routine risk, the officer in *Santiago* was aware he was traversing a staircase. Officer Ciccone was entirely unaware of the flush, unguarded hazard behind her.

Finally, the Court turns to the Board's analysis of the missing guardrail. In addressing the Court's previous remand instructions, the City Trustees conceded that the opening lacked a guardrail on the side where the petitioner fell (NYSCEF Doc. No. 45 at 32). To circumvent this dangerous defect, the Trustees reasoned that "had a guardrail been present, the officer would have stepped back into the guardrail and could very well have fallen over the top of it and suffered the same injury" (NYSCEF Doc. No. 45 at 32-33).

This reasoning is purely speculative and/or hypothetical conjecture and cannot be used as a valid basis for denying an application for ADR benefits (*see Matter of Meyer*, 90 NY2d at 147). A denial of disability benefits cannot be sustained when it is based on hypothetical conjecture of what *might* have happened had the premises not been defective. As the Court of Appeals established in *Matter of Meyer*, "conjecture" and "unsupported suspicion" are an invalid and inadequate basis for denying an application (*Meyer* 90 NY2d at 147; *see also* NYSCEF Doc. No. 24 at 10-11). Because the respondents' attempt to excuse the lack of a guardrail rests entirely on impermissible conjecture, it does not constitute credible evidence.

To survive appellate scrutiny, a 6-6 tie vote requires some credible evidence. Here, the respondents have proffered none. The facts are undisputed. The Board's rationale for denial consists of an invalid routine duty test, a misapplication of the readily observable doctrine to an unseen, flush-to-the-ground drop-off and pure hypothetical conjecture regarding the missing guardrail. When an administrative body repeatedly relies on flawed legal theories and conjecture instead of credible evidence, the Court is not required to issue a futile second remand. Because the undisputed record establishes that the petitioner's disabling injury was precipitated by an unexpected, unguarded hazard constituting a sudden fortuitous mischance, she is entitled to ADR benefits as a matter of law.

Accordingly, it is hereby

ADJUDGED and **ORDERED** that the petition is GRANTED; and it is further

ADJUDGED and **ORDERED** that the September 10, 2024 determination of the respondents is annulled as arbitrary, capricious, and unsupported by credible evidence; and it is further

ADJUDGED and **ORDERED** that the respondents are directed to grant petitioner Meenawatti Ciccone's application for Accidental Disability Retirement benefits, retroactive to the date of her ordinary disability retirement, with all attendant back pay and benefits.

This constitutes the Decision and Order of the Court.


20260622161226V00000092708907C3745B68B9E70B6AACC66A2

<u>6/22/2026</u>		<u>NICHOLAS W. MOYNE, J.S.C.</u>	
DATE			
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE