

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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PETE RODRIGUEZ,

Petitioner,

- v -

EDWARD A CABAN, THE BOARD OF TRUSTEES OF THE
NEW YORK CITY POLICE PENSION FUND, ARTICLE II

Respondent.

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INDEX NO. 157377/2024

MOTION DATE 08/12/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

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

Upon the foregoing documents, the petition is granted.

Background

Pete Rodriguez (“Petitioner”) was appointed to the NYPD in 2005, and he sustained line-of-duty injuries to his right shoulder, neck, and lower back in 2010, leading to surgery on his right shoulder. Then in 2015, Petitioner suffered additional line-of-duty injuries to his right shoulder, neck, and lower back. He was out from work for over a year due to his injuries. He was then returned full duty against the advice of his treating neurologist. In 2019, Petitioner was placed on restricted duty due to the state of Petitioner’s neck. In 2021, Petitioner underwent a spinal fusion operation to his neck, which was authorized by the NYPD Medical Division on the basis that it arose from a line-of-duty injury. When the surgery was first recommended to Petitioner, he sought a second opinion. This second opinion recommended against the surgery. Petitioner then sought further medical opinions, all of which recommended the surgery. He underwent the surgery, and as a result has range of motion restrictions.

The PPF Article II Medical Board (the “Medical Board”) issued a recommendation on Petitioner’s disability application to the Board of Trustees of the New York City Police Pension Fund (together with Edward A. Caban and the Medical Board, the “Respondents”). The Medical Board approved Petitioner for Ordinary Disability Retirement (“ODR”, meaning that his disability was not determined to be service-related), but disapproved him for Accidental Disability Retirement (“ADR”, which would find that his disability was service-related, thus impacting the amount of Petitioner’s pension). The Medical Board’s stated reasoning was that they were unable to find a causal relationship between the line-of-duty injuries and the spine surgery, because of “the absence of contemporaneous medical treatment records between 2016 and 2019.” The Board of Trustees approved the ODR award and denied the ADR request by a 6-6 tie vote in April of 2024.

Petitioner then timely brought this present petition seeking to challenge this decision. He seeks an order annulling the decision to deny his ADR request and directing the Respondents to retire Petitioner with an accidental disability retirement retroactive to the date of his service retirement. Alternatively, Petitioner seeks a remand of his case or an order directing the City Trustees to support their conclusory denial.

Standard of Review

A party may bring an Article 78 petition to challenge the final determination of an administrative agency. CPLR § 7801(1). A court must give great deference to the agency’s decision and cannot “interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious.” *Pell v. Board of Education*, 34 N.Y.2d 222, 231 (1974). Judicial review is also available if the agency’s determination was “contrary to law

or procedure.” *Barrett Japaning, Inc. v. Bialobroda*, 190 A.D.3d 544, 545 (1st Dept. 2021). An action is irrational or arbitrary and capricious if “it is taken without sound basis in reason or regard to the facts.” *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1027 (1st Dept. 2021).

Discussion

The standard of review in matters of a 6-6 tie vote resulting in a denial of ADR benefits is slightly different from other Article 78 proceedings. The decision to deny ADR in such a circumstance can only be set aside if “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.” *Canfora v. Board of Trustees*, 60 N.Y.2d 347, 352 [1983]; *see also McCambridge v. McGuire*, 62 N.Y.2d 563, 568 [1984] (holding that “a court may set aside a denial of accident benefits [] when it concludes that the applicant is entitled to them as a matter of law”); *Meyer v. Bd. of Trs. of the N.Y. City Fire Dep’t*, 90 N.Y.2d 139, 145 [1997] (explaining that “the reviewing court may only disturb the final award by finding causation established as a matter of law [and] as long as there was any credible evidence of lack of causation before the Board of Trustees, its determination must stand”). Here, the Petitioner was not found to be disabled before the spinal fusion surgery but was found to be disabled after the surgery as a result of the surgery’s impact on his range of motion and neck and shoulder.

The issue before the Court, therefore, is whether it can be determined from the record that Petitioner’s disability as a result of the spinal fusion surgery was the natural and proximate cause of his line-of-duty injuries, as a matter of law. The Medical Board’s stated reasoning for finding that there was no nexus between the line-of-duty injuries and the disability was the gap of time between the last injury in 2015 and Petitioner’s placement on restricted duty in 2019.

Respondents argue that this gap, plus the recommendation against the surgery from one of the multiple physicians consulted by Petitioner before the surgery, constitute some credible evidence and would support the finding of no nexus.

But the gap of time is not, as a matter of law, sufficient grounds for a finding of no nexus between the line-of-duty injuries and the disability. In *Tobin*, the Court of Appeals held that as a matter of law, “an accident which produces injury by precipitating the development of a latent condition or by aggravating a preexisting condition is a cause of that injury.” *Tobin v. Steisel*, 64 N.Y.2d 254, 259 [1985]; *see also Matter of Salvia v. Bratton*, 159 A.D.3d 583, 584 [1st Dept. 2018] (holding that a determination that there was no causal connection based on a two-year gap in treatment was conclusory and could not support a denial of ADR benefits); *Matter of Boder v. O’Neill*, 170 A.D.3d 528, 529 [1st Dept. 2019] (holding that a denial of ADR benefits based on a two-year gap in treatment during which the petitioner was returned to full duty was conclusory).

Respondents also point out that one of the four consulted neurologists who opined that the surgery was not necessary as evidence going against a causal connection. But the neurologist in question stated that he did not consider the surgery in question to be likely to help Petitioner’s symptoms, and did not find that there was no connection between the line-of-duty injuries and the symptoms that inspired the surgery. Furthermore, the NYPD Medical Division itself found that the surgery was causally connected to the line-of-duty injuries and authorized the surgery accordingly. Petitioner has produced substantial medical evidence connecting the symptoms necessitating the surgery and the line-of-duty injuries. The Medical Board’s determination that there was no nexus was conclusory and runs contrary to the case law dealing with gaps in treatment. Therefore, as a matter of law, the 6-6 tie vote denying ADR benefits should be annulled. Accordingly, it is hereby

ADJUDGED that the petition is granted; and it is further

ORDERED that the denial of petitioner Pete Rodriguez’s application for accidental

disability retirement is hereby annulled; and it is further

ORDERED that petitioner Pete Rodriguez be retired with an accidental disability

retirement allowance retroactive to the date of his service retirement.

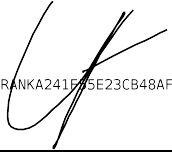
5/8/2025
DATE

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CASE DISPOSED	
GRANTED	☐ DENIED
SETTLE ORDER	
INCLUDES TRANSFER/REASSIGN	

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LYLE E. FRANK, J.S.C.

☐ NON-FINAL DISPOSITION	
GRANTED IN PART	☐ OTHER
SUBMIT ORDER	
FIDUCIARY APPOINTMENT	☐ REFERENCE