

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
SECOND JUDICIAL DEPARTMENT

Matter of Smiley v. Whinnery

2026 NY Slip Op 03970 (N.Y. Ct. App. 2026) · No. 2022-02323 · Decided June 24, 2026

SUMMARY

The Appellate Division, Second Department, held that the Medical Board's determination denying performance-of-duty disability retirement benefits based on the petitioner's physical conditions was arbitrary and capricious because it lacked credible evidentiary support and failed to address medical evidence in light of the FDNY paramedic job description. The court affirmed annulment of the determination but modified the judgment to deny attorneys' fees because no agreement, statute, or court rule authorized such an award.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                              |
| WRITING FOR THE COURT | Valerie Brathwaite Nelson, J.P.; Helen Voutsinas, J.; Janice A. Taylor, J.; Donna-Marie E. Golia, J.                                                                                                                                                                |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                              |
| DECIDED               | June 24, 2026                                                                                                                                                                                                                                                       |
| DOCKET                | 2022-02323                                                                                                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | CPLR article 78 proceeding challenging the Board of Trustees' denial of performance-of-duty disability retirement benefits based on physical disability; appeal from a Supreme Court, Kings County, judgment granting the petition and annulling the determination. |
| STANDARD OF REVIEW    | An agency determination is reviewed under the arbitrary-and-capricious standard and must have a rational basis; a Medical Board's determination is conclusive if supported by some credible evidence and not arbitrary or capricious.                               |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                                                                                                                                                                   |
| PARTIES               | Melanie Whinnery, Medical Board of the New York City Employees' Retirement System, Board of Trustees of the New York City                                                                                                                                           |

## TOPICS

judicial review of agency action

administrative law

standard of review

appellate procedure

attorney fees

## PRACTICE AREAS

administrative law

public employee disability retirement

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Medical Board's determination that Smiley's sinusitis and other physical conditions did not disable him from performing the actual duties of an FDNY paramedic was arbitrary and capricious and unsupported by credible evidence.
2. Whether the Supreme Court properly annulled the Board of Trustees' determination and directed NYCERS to award performance-of-duty disability retirement benefits based on a qualifying World Trade Center-related physical condition.
3. Whether the Supreme Court had a legal basis to award Smiley attorney fees in the CPLR article 78 proceeding.

## HOLDINGS

1. The Medical Board's determination that Smiley's sinusitis was not sufficiently severe to prevent him from performing the duties of an FDNY paramedic was arbitrary and capricious because it was unsupported by credible evidence and failed to consider relevant medical evidence in light of the revised paramedic job description.
2. The Supreme Court properly annulled the Board of Trustees' November 30, 2020 determination and directed NYCERS to retire Smiley with performance-of-duty disability benefits based on his World Trade Center-related qualifying physical condition.
3. The Supreme Court erred in awarding attorney fees because no agreement, statute, or court rule authorized such an award.

## KEY QUOTATIONS

*“The net effect of the statutory presumption is that first responders . . . need not submit any evidence—credible or otherwise—of causation in order to obtain the enhanced accidental disability retirement benefits, but rather the burden falls to the relevant pension fund . . . to tender affirmative competent or credible evidence to disprove causation” (\*2)*

*“The Medical Board may not simply ignore medical evidence by failing to refute the conclusions of the petitioner's treating physicians” (\*3)*

*“The general rule is that in [CPLR] article 78 proceedings, the prevailing party may not collect attorneys' fees from the loser unless an award is authorized by agreement between the parties or by statute or by court rule” (\*3)*

## FACTUAL BACKGROUND

Gary Smiley was an FDNY paramedic and first responder at the World Trade Center site after the September 11, 2001 attacks. He claimed asthma, chronic sinusitis and rhinitis, GERD, PTSD, dizziness, headaches, and other conditions. The Medical Board found him disabled on mental-health grounds but repeatedly concluded that his physical conditions did not prevent him from performing the actual duties of an FDNY paramedic, including work involving smoke, irritants, confined spaces, extended shifts, lifting, climbing, and endurance. The Appellate Division concluded that the Medical Board failed to address substantial medical evidence concerning the functional effects of Smiley's sinus condition in light of the revised paramedic job description.

## PROCEDURAL HISTORY

Smiley applied for World Trade Center-related performance-of-duty disability retirement benefits under Retirement and Social Security Law § 607-b. After prior remands and proceedings, the Medical Board recommended approval based on PTSD and depression but denial based on physical conditions, and the Board of Trustees adopted that recommendation in 2020. Supreme Court annulled the determination and directed retirement benefits based on a qualifying physical condition, while also awarding attorney fees. The Appellate Division affirmed the annulment and benefits relief but modified the judgment to deny attorney fees.

## DISPOSITION

affirmed

## CASES CITED

- *Hojas v. Jones*, 240 AD3d 672, 674
- *Matter of Bitchatchi v. Board of Trustees of the N.Y. City Police Dept. Pension Fund, Art. II*, 20 NY3d 268, 281-282
- *Matter of LaBella v. New York City Employees' Retirement Sys.*, 232 AD3d 793, 794-796
- *Matter of Samadjopoulos v. New York City Employees' Retirement Sys.*, 104 AD3d 551, 552-553
- *Matter of Rosa v. New York City Employees' Retirement Sys.*, 227 AD3d 810, 812-813
- *Matter of Russell v. New York City Employees' Retirement Sys.*, 155 AD3d 1046
- *Matter of Gibson v. Commissioner of the N.Y. State Dept. of Motor Vehs.*, 223 AD3d 667
- *Matter of Haag v. DiNapoli*, 201 AD3d 1179, 1180
- *Matter of Bradley v. New York City Employees' Retirement Sys.*, 193 AD3d 847, 849
- *Matter of Smith v. New York City Fire Dept.*, 239 AD3d 870, 872
- *Matter of LaBarbera v. New York City Dept. of Educ.*, 241 AD3d 547