

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Matter of Rubenstein v Metropolitan Transportation Authority

2016 NY Slip Op 08160 (N.Y. Ct. App. 2016) (Appellate Division of the Supreme Court of the State of New York First Department 2016) · No. 2373 · Decided December 6, 2016

SUMMARY

The Appellate Division, First Department, affirmed the denial of Scott A. Rubenstein's petition to annul the Metropolitan Transportation Authority's determination denying accidental disability retirement benefits. The court held that the proceeding did not require substantial-evidence review and that the MTA rationally determined that Rubenstein's injuries, sustained before his tour began in an MTA Police Department parking lot, were not incurred while he was in service.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                        |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, First Department                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Renwick, J.P.; Saxe, J.; Gische, J.; Webber, J.                                                                                                                                                                                                                                                        |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                               |
| DECIDED               | December 6, 2016                                                                                                                                                                                                                                                                                       |
| DOCKET                | 2373                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Petitioner appealed from a judgment of Supreme Court, New York County, denying his CPLR article 78 petition to annul the respondents' determination denying his application for accidental disability retirement and dismissing the proceeding.                                                        |
| STANDARD OF REVIEW    | Whether the administrative determination was arbitrary and capricious, an abuse of discretion, or affected by an error of law; substantial-evidence review under CPLR 7803(3) was not implicated because the hearing was neither transcribed nor recorded and there were no material factual disputes. |
| PRECEDENTIAL VALUE    | Published New York Appellate Division decision                                                                                                                                                                                                                                                         |
| PARTIES               | Scott A. Rubenstein v. Metropolitan Transportation Authority, et al.                                                                                                                                                                                                                                   |

TOPICS

judicial review of agency action

agency adjudication

administrative law

civil procedure

## PRACTICE AREAS

administrative law

civil procedure

public employee benefits

## QUESTIONS PRESENTED

1. Whether Supreme Court should have transferred the CPLR article 78 proceeding for substantial-evidence review under CPLR 7804(g).
2. Whether respondents acted arbitrarily, abused their discretion, or committed an error of law in determining that petitioner's injuries were not sustained while he was "in service" and therefore did not qualify him for accidental disability retirement.

## HOLDINGS

1. Transfer under CPLR 7804(g) was not required because the hearing before the hearing officer was not transcribed or recorded and therefore was not a quasi-judicial hearing implicating substantial-evidence review. In addition, no material factual disputes existed.
2. Respondents rationally determined that petitioner's injuries were not sustained while he was "in service" because they occurred thirty minutes before his tour was to begin, before he commenced his duties, in the MTA Police Department parking lot. The determination was therefore not arbitrary and capricious.

## KEY QUOTATIONS

*"The only question presented in the court below was whether, based on the uncontested facts, respondents acted arbitrarily, abused their discretion, or committed an error of law, in concluding that petitioner's injuries were not sustained while he was "in service," and thus that he did not qualify for accidental disability retirement."* ([\*1])

*"Accordingly, the court below correctly found that respondents' determination was not arbitrary and capricious"* ([\*2])

## FACTUAL BACKGROUND

Rubenstein, a member of the MTA Police Department, was injured in an MTA Police Department parking lot approximately thirty minutes before his tour of duty was scheduled to begin and before he had commenced his duties. He applied for accidental disability retirement, but respondents determined that the injuries were not sustained while he was "in service." The material facts concerning the nature, circumstances, and causation of the injuries were uncontested.

## PROCEDURAL HISTORY

Supreme Court, New York County, denied the petition and dismissed the CPLR article 78 proceeding. The Appellate Division unanimously affirmed, without costs, and held that Supreme Court properly declined to transfer the proceeding under CPLR 7804(g).

## DISPOSITION

affirmed

## CASES CITED

- Matter of Milt-Nik Land Corp. v. City of Yonkers, 24 AD3d 446, 447 (2d Dep't 2005)
- Matter of Rosenkrantz v. McMickens, 131 AD2d 389 (1987)
- Matter of Cantello v. Regan, 154 AD2d 867 (3d Dep't 1989)
- Matter of Okon v. Regan, 185 AD2d 438 (3d Dep't 1992)
- Matter of De Zago v. New York State Police & Fireman's Retirement Sys., 157 AD2d 957 (3d Dep't 1990)
- Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 (1974)

## OPINION

### PER CURIAM.

Matter of Rubenstein v Metropolitan Transp. Auth. (2016 NY Slip Op 08160) Matter of Rubenstein v Metropolitan Transp. Auth. 2016 NY Slip Op 08160 Decided on December 6, 2016 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on December 6, 2016 Renwick, J.P., Saxe, Gische, Webber, JJ. 2373 100403/15 [\*1]In re Scott A. Rubenstein, Petitioner-Appellant, vMetropolitan Transportation Authority, et al., Respondents-Respondents. Davis & Ferber, LLP, Islandia (Alex J. Kaminski of counsel), for appellant. Bee Ready Fishbein Hatter & Donovan, LLP, Mineola (Andrew K. Preston of counsel), for respondents.

Judgment, Supreme Court, New York County (Alexander W. Hunter, Jr., J.), entered July 24, 2015, which denied the petition seeking to annul respondents' determination, dated November 20, 2014, denying petitioner's application for accidental disability retirement, and dismissed the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs.

The court did not err in declining to transfer the proceeding pursuant to CPLR 7804(g). First, because the hearing before a hearing officer was not transcribed or recorded, the hearing was not a quasi-judicial hearing which would implicate substantial evidence review under CPLR 7803(3) (see Matter of Milt-Nik Land Corp. v City of Yonkers, 24 AD3d 446, 447 [2d Dept 2005]).

In any event, there were no material factual disputes regarding the nature, circumstances, and causation of petitioner's injuries, and thus no contested issues of substantial evidence to resolve (see Matter of Rosenkrantz v McMickens, 131 AD2d 389 [1987]).

The only question presented in the court below was whether, based on the uncontested facts, respondents acted arbitrarily, abused their discretion, or committed an error of law, in concluding that petitioner's injuries were not sustained while he was "in service," and thus that he did not qualify for accidental disability retirement.

The court properly found that respondents rationally determined that petitioner's injuries — which occurred thirty minutes before his tour of duty was to begin, and before he had commenced his duties, in the MTA Police Department parking lot — were not sustained while he was "in service" (see *Matter of Cantello v Regan*, 154 AD2d 867 [3rd Dept 1989]; *Matter of Okon v Regan*, 185 AD2d 438 [3rd Dept 1992]).

The facts here are readily distinguishable from those in *Matter of De Zago v New York State Police & Fireman's Retirement Sys.* (157 AD2d 957 [3rd Dept 1990]), relied on by petitioner, where, although the injuries occurred fifteen minutes before the starting time of the petitioner's tour, the court found that they were sustained in the line of duty because the petitioner was in uniform at the time, and actually performing police duties pursuant to a longstanding procedure in that department that required that officers report to work fifteen to thirty minutes before their tours of duty began for "pretour [\*2]preparations."

Accordingly, the court below correctly found that respondents' determination was not arbitrary and capricious (see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 6, 2016 CLERK