

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

Matter of Cacciatore v. Tisch

2026 NY Slip Op 03626 · No. Case No. 2025-05832; Appeal No. 6844; Index No. 161781/24 · Decided June 9, 2026

SUMMARY

The Appellate Division, First Department, affirmed the denial of Peter Cacciatore's application for accidental disability retirement benefits. The court held that, despite the undisputed connection between his psychiatric conditions and the line-of-duty incident, responding to a dangerous crime scene and witnessing violence were risks inherent in his regular duties and therefore were not an accidental event as a matter of law. The court also declined to consider an argument raised for the first time in the petitioner's reply brief.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Mendez, J.; Rodriguez, J.; Hagler, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	June 9, 2026
DOCKET	Case No. 2025-05832; Appeal No. 6844; Index No. 161781/24
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a Supreme Court, New York County judgment, denominated an order, that denied his CPLR article 78 petition seeking to annul the Board of Trustees of the Police Pension Fund's denial of accidental disability retirement benefits and dismissed the proceeding.
STANDARD OF REVIEW	When the Board's denial of accidental disability retirement benefits results from a tie vote, a reviewing court may set it aside only if the record establishes as a matter of law that the disability was the natural and proximate result of a service-related accident.
PRECEDENTIAL VALUE	Published appellate decision

PARTIES

Peter Cacciatore v. Jessica S. Tisch, Board of Trustees of the Police Pension Fund, other respondents

TOPICS

judicial review of agency action administrative law standard of review agency adjudication
appellate procedure

PRACTICE AREAS

administrative law municipal law public employee disability benefits appellate procedure

QUESTIONS PRESENTED

1. Whether the Board's tie-vote denial of accidental disability retirement benefits could be annulled because petitioner's psychiatric disability was, as a matter of law, the natural and proximate result of a service-related accident.
2. Whether responding to a dangerous crime scene, witnessing violence and human suffering, and fearing for one's safety constituted an accidental event for purposes of accidental disability retirement benefits.
3. Whether petitioner's argument that pandemic-related exacerbation of his condition independently supported an award of benefits could be considered when raised for the first time in his reply brief.

HOLDINGS

1. A reviewing court may not set aside the Board's tie-vote denial of accidental disability retirement benefits unless the record establishes as a matter of law that the disability was the natural and proximate result of a service-related accident.
2. Responding to a dangerous crime scene, witnessing violence and human suffering, and fearing for one's own safety were risks inherent in the petitioner's regular job duties and were not, as a matter of law, an accidental event for purposes of accidental disability retirement benefits.
3. The court declined to consider petitioner's argument that exacerbation of his condition during the pandemic provided an independent basis for accidental disability retirement benefits because the argument was raised for the first time in his reply brief.

KEY QUOTATIONS

*"Where, as here, the Board's determination is reached as a result of a tie vote, "a reviewing court may not set aside [the Board's] denial of ADR benefits 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"" ([*1])*

*"Under the governing standard, responding to a dangerous crime scene, witnessing violence and human suffering, and fearing for his own safety were within the "risk[s] inherent in [petitioner's] regular job duties" as a police officer" ([*1])*

FACTUAL BACKGROUND

Petitioner, a police officer, developed posttraumatic stress disorder and major depressive disorder after responding to a stabbing on January 15, 2009. At the scene, he found a fellow officer stabbed through the eye into the brain and in the torso, held the officer's dislodged eye in its socket, and applied pressure to the torso wound while other officers attempted to control the armed perpetrator. The parties did not dispute that the incident caused petitioner's psychiatric condition.

PROCEDURAL HISTORY

The Police Pension Fund Board denied petitioner's application for accidental disability retirement benefits following a tie vote. Supreme Court, New York County, denied the article 78 petition and dismissed the proceeding. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Medina v Shea, 191 AD3d 475, 476 [1st Dept 2021], lv denied 37 NY3d 903 [2021]
- Matter of Compagnone v DiNapoli, 42 NY3d 1075, 1076 [2024]
- Matter of McQuade v New York State Comptroller, 236 AD3d 1290, 1292 [3d Dept 2025]
- Matter of Cummings v Regan, 107 AD2d 968, 969 [3d Dept 1985]

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. In the Matter of Peter Cacciatore, Petitioner-Appellant, v Jessica S. Tisch, etc., et al., Respondents-Respondents. Decided and Entered: June 09, 2026 Index No. 161781/24|Appeal No. 6844|Case No. 2025-05832| Before: Webber, J.P., Gesmer, Mendez, Rodriguez, Hagler, JJ. Law Office of Timothy McEnaney, P.C., Port Washington (Timothy McEnaney of counsel), for appellant.

Steven Banks, Corporation Counsel, New York (Stephanie Teplin of counsel), for respondents. [*1] Judgment (denominated an order), Supreme Court, New York County (Gerald Lebovits, J.), entered on or about July 7, 2025, which denied the petition to annul a determination of respondent Board of Trustees of the Police Pension Fund, dated August 15, 2024, denying petitioner's

application for accidental disability retirement (ADR) benefits, and dismissed the proceeding brought pursuant to CPLR article 78, unanimously affirmed, without costs.

Petitioner suffers from posttraumatic stress disorder and major depressive disorder following a line-of-duty incident that occurred on January 15, 2009. Petitioner responded to the scene of a stabbing to find his fellow officer stabbed through the eye into his brain as well as in the torso. Petitioner held his fellow officer's dislodged eye in its socket and applied pressure to his torso wound while two other officers attempted to control the perpetrator who was still wielding a knife.

None of the parties dispute that the incident caused petitioner's condition. Where, as here, the Board's determination is reached as a result of a tie vote, "a reviewing court may not set aside [the Board's] denial of ADR benefits 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" (see *Matter of Medina v Shea*, 191 AD3d 475, 476 [1st Dept 2021], lv denied 37 NY3d 903 [2021]).

The events of January 15, 2009, were not, as a matter of law, "accidental" for the purposes of ADR benefits (*id.*). Under the governing standard, responding to a dangerous crime scene, witnessing violence and human suffering, and fearing for his own safety were within the "risk[s] inherent in [petitioner's] regular job duties" as a police officer (*Matter of Compagnone v DiNapoli*, 42 NY3d 1075, 1076 [2024] [internal quotation marks omitted]; see *Matter of McQuade v New York State Comptroller*, 236 AD3d 1290, 1292 [3d Dept 2025]; *Matter of Cummings v Regan*, 107 AD2d 968, 969 [3d Dept 1985]).

We decline to consider petitioner's argument, raised for the first time in his reply brief, that the exacerbation of his condition during the pandemic provides an independent basis for ADR. We have considered petitioner's remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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PER CURIAM.

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