

Delegate Handbook

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PROTECTING INJURED WORKERS IN MATTERS RELATED TO WORKERS' COMPENSATION AND
SOCIAL SECURITY DISABILITY FOR OVER SIXTY YEARS.

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CONTENTS

Workers' Compensation Overview

Employee's Guide to Workers' Comp	
Cash Benefits	
Common Questions	
Schedule Loss of Use	
Filing a Claim	
C3 Form	

Social Security

Why File for Social Security Disability Benefits?	
Disability Benefits	

Disability Retirement

Frequently Asked Questions.....	
Payment Options.....	
Case Laws (Assault, Slip & Fall, Hazards, Medical)	

Public Safety Officer's Benefits Program

Fact Sheet.....	
Checklist: Filing a PSOB Death Claim	
Checklist: Filing a PSOB Disability Claim	
Education Assistance Program	

WTC 12 Registration of Participation

Copy of WTC -12 Form With Updated Filing Deadline.....	
Filing WTC-Related Workers' Compensation Claims.....	
MTA PBA 20 Year Police Benefit Pension Plan.....	
WTC Clean up & Recovery Presumption letter-July 2015.....	



WORKERS' COMPENSATION OVERVIEW

- INJURED ON THE JOB?
- CASH BENEFITS
- COMMON QUESTIONS
- SCHEDULED LOSS OF USE
- FILING A CLAIM
- C3 FORM

INJURED ON THE JOB?

**An Employee's Guide to
Workers' Compensation in
New York State**



New York State Workers' Compensation Board

Privacy Statement

All documents the Workers' Compensation Board has about your case are private. Under workers' compensation law, only the parties to your claim may receive information from your case file. Beyond you and your attorney or representative, the parties who may see information include

- your employer and your employer's attorney
- your employer's workers' compensation insurance carrier and its attorney

That insurance carrier may share information with health care providers it hires to examine you. Your health care providers will have to share your health information with that insurer when they bill for their services.

Anyone who obtains a court order authorizing access to your claim information is also included. Your information may also be shared with government entities if they are processing a claim for benefits or investigating fraud.

No one may disclose your information to anyone who is not authorized to see it.

You may give written permission to anyone you choose to access your claim information, in two ways.

1. File an original Form OC-110A, Claimant's Authorization to Disclose Workers' Compensation Records. This is available from *www.wcb.ny.gov*, under *Forms*, or by calling 1.866.750.5157.
2. File an original notarized letter or form where you authorize a particular person or entity to see your claim information.

You may submit an authorization at any time. It's always helpful to share a copy of that document with the person you authorize to see your records. Some people authorize their spouse or child to access their records when they initially file for benefits.

Prospective employers may not ask you to give them information about your workers' compensation claims before hiring you.

Table of Contents

Privacy Statement	i
What is Workers' Compensation?	2
How to File a Claim	2
Who Is and Isn't Covered?	3
A Worker's Responsibilities	3
Medical Care	4
Rehabilitation and Social Work	5
Occupational Disease	5
Wage Replacement (Cash) Benefits	6
Reduced Earnings Benefits	6
Disability Classifications	7
Resolving Disputed Claims	8
Disability Benefits During a Dispute	8
Death Benefits	9
Social Security Benefits	9
Discrimination	9
A Timeline for Your Case	10
Common Questions	10
Directory of WCB Board Offices	12

The C-3 and C-3.3 forms follow the text of this document.

This pamphlet is a general, simplified presentation of
workers' compensation provisions and procedures.
It is not a substitute for the law or legal advice.

The Workers' Compensation Board does not discriminate on the
basis of race, color, national origin, sex, religion, age, disability
or sexual preference when providing services or in employment.

Workers' compensation fraud is a felony,
punishable by fines and up to seven years imprisonment.
To report fraud, call 1-888-363-6001.

What is Workers' Compensation?

Workers' compensation is a form of insurance. Most employers must carry this insurance for workers who are injured or become ill because of their jobs. It provides for medical care, and wages you lose because your ability to work is affected. Employers pay for this insurance and may not ask you to pay anything toward the cost. The benefits are paid by an insurance carrier, or by the employer if it insures itself. Benefits are paid according to the law, and the Workers' Compensation Board ensures they are correctly provided.

The Workers' Compensation Board is a state agency that oversees how employers and insurers handle the claims of injured workers. A claim is paid if the insurer agrees the incident is work-related, or if the Board orders it. An employer or its insurer can dispute the claim. If that happens, the Board will try to resolve the dispute within 90 days. For example, the insurer may believe the incident didn't occur at work. It may not even agree that it covered your employer when you were hurt. Other issues may also arise. Whatever the reason, the Board will try to resolve it as quickly as possible.

You don't need to lose time from work to file a claim. No one needs to be found at fault for you to receive benefits. Claimants don't receive less if they were careless, nor do they receive more if the employer is at fault. However, a worker loses the right to benefits if the injury results solely from using drugs or alcohol, or from trying to injure herself or someone else.

HOW TO FILE A CLAIM

*You must report the injury, in writing, to your employer within 30 days of the accident. **The Board must be notified of your case within two years of the accident.** You must also file a claim for compensation as soon as possible.*

You may file Form C-3, Employee's Claim for Compensation, one of three ways.

- 1. Online, go to www.wcb.ny.gov and click **Workers** to complete the form.*
- 2. Complete a paper C-3 and mail it to the nearest Board office. A C-3 is in the center of this pamphlet, and Board addresses are on the back.*
- 3. Call 1-866-396-8314. A Board representative will complete it with you.*

You will be notified by mail if a hearing is necessary.

Who Is Covered?

- Workers in all for-profit businesses.
- County and municipal employees.
- Public school aides, including New York City aides. New York City shop teachers are covered; other New York City teachers are covered in another system.
- Employees of the state of New York, including some volunteer workers.
- Domestic workers employed 40 or more hours per week by the same employer. This includes full-time sitters, companions, and live-in maids.
- Farm workers whose employer paid \$1200 or more for farm labor in the previous calendar year.
- Anyone else the Board determines is an employee.

Religious, educational or charitable nonprofit entities may voluntarily cover their clergy and teachers. Domestic workers employed fewer than 40 hours a week and not living in the employer's residence may also be covered voluntarily by their employer. It isn't mandatory.

Who Isn't Covered?

- Volunteers at nonprofit organizations.
- Clergy and members of religious orders who are performing religious duties.
- People working at educational, religious or charitable institutions who teach or perform nonmanual labor.
- People covered by federal workers' compensation laws. This includes postal workers, certain maritime trades, interstate railroad, and federal employees.
- Anyone doing yard work or casual chores at a one-family, owner-occupied home. (A minor handling power-driven machinery, including a power lawn mower, is covered.) There may be limited coverage under a homeowner's policy.
- Certain foreign government employees.
- New York City police officers, firefighters, teachers and sanitation workers are covered by another system. Other uniformed police and firefighters may also be excluded.
- Certain real estate salespeople, insurance agents and media sales representatives who sign contracts stating that they are independent contractors.
- Sole proprietors, partners, and certain one/two person corporations without employees. They may cover themselves.

A Worker's Responsibilities

1. Try to return to work as soon as you're physically capable. Your employer may have transitional or light duty work for you.
 2. You're responsible for looking for work within your physical abilities. This may mean working outside your previous occupation.
 3. Respond to all inquiries and documents from the Board and the insurer in a timely manner.
 4. Advise the Board and other parties of address changes.
 5. Attend all hearings and appointments. Arrive on time.
 6. Answer questions thoroughly and honestly.
 7. Participate actively in your case. Don't let events happen around you.
 8. Understand any agreements you make.
 9. Ask questions of your representative and the Board.
-

Medical Care

A worker who is injured on the job or becomes ill from his work will have his health care for that condition paid under a workers' compensation claim. This care is covered whether or not you lose time from work. It is also paid in addition to any benefits you get for missed wages.

Health care providers must be authorized by the Board to see workers' compensation patients. The Board has lists of providers who are authorized to treat you. You can find a doctor on www.web.ny.gov under *Health Care Information*, or by calling 1-800-781-2362. You can receive care from any of these providers, or from your own doctor, if he or she is registered. The providers will send the bills directly to the insurer and the Board. **Do not pay any bills unless the Board disallows your case.** You may also receive reimbursement for travel to and from a health care provider's office.

If specific medical services are disputed, the insurer must pay any undisputed portion. It must also explain in writing why the services were not paid, and request any information needed to pay them. Your doctors may ask you to sign Form A-9. This states you'll pay the bills if the Board does not allow your claim, or if you drop your case before it's accepted.

Preferred Provider Organizations

If the insurer has a network of providers to care for injured workers, you must use those providers. This is called a Preferred Provider Organization (PPO). The insurer must notify you of this. If you aren't satisfied with the care you receive from the PPO, you may select an authorized provider outside the PPO after 30 days of treatment.

Diagnostic Networks

Insurers may also require you to use its network of facilities for diagnostic tests. Make sure to tell your doctors and other providers if the insurance carrier requires you to use its network for diagnostic test.

Pharmacy Charges

You can go to any pharmacy, unless the insurer uses a network. Make sure the pharmacist knows you have a workers' compensation case, because many will bill the carrier directly, rather than you. However, the pharmacy can ask you to pay for the prescription up front. The insurer must reimburse you within 45 days. The pharmacy can only charge you the amount specified by law, so even if you pay in advance, you will be fully reimbursed. You're not responsible for a copayment.

If you must use an insurer's network pharmacy, the insurer must tell you how you should use it. Those pharmacies are paid directly. You will not be responsible for any charges.

Exceptions

1. *Testing:* The insurer may not demand you use a network provider for a diagnostic test in a medical emergency. It may not demand you use a network that does not have a provider or facility within a *reasonable distance*, which is *one mile from your home or employment in an urban setting, and ten miles in a suburban or rural setting*.

2. *Pharmacy:* The insurer may not demand you use network pharmacies if it is not reasonably possible in a medical emergency. *You don't need to use network pharmacies if they don't offer mail order or aren't located a reasonable distance from you, either.*

TYPES OF SERVICES COVERED

Medical
Osteopathic
Dental
Podiatric
Psychological
(by referral)
Chiropractic Treatment
Surgery
Hospital Care

Laboratory Tests
Prescribed Drugs
Nursing Services
Surgical Appliances
Prosthetic Devices

Preauthorization is sometimes required.

Rehabilitation and Social Work

Rehabilitation services help people return to work, and to lead full and active lives. Specific services are explained below.

Medical rehabilitation helps people reach maximum independence and functioning. It provides workers with information and helps them obtain medical care, physical accommodation or other special needs. Only a physician may recommend medical rehabilitation, so talk to your doctor. This service is arranged outside the Board.

Vocational rehabilitation helps people whose disability prevents them from returning to their usual job. Counselors help injured workers find employment that fits their abilities. They also help develop a plan to return to work. This may include vocational counseling and referrals for training and selective job placement.

Social workers assist people when family or financial problems interfere with their returning to work. Social workers help people cope with their disability and discuss their concerns about rehabilitation. They can also help workers prepare to return to work.

The Board has counselors, social workers and claims examiners who coordinate and monitor other services. If you could benefit from these services, contact the Board. The office telephone numbers are on the back cover of this pamphlet.

Occupational Disease

An occupational disease is contracted as the result of your work. It arises from a specific aspect of the work that you perform. For example, people who remove asbestos may contract asbestosis. People who work on computers may suffer carpal tunnel syndrome.

You may be disabled by an occupational disease even if you don't lose time from work.

The rules governing the time limits for filing an occupational disease claim are complex. You should file as soon as you know you're ill, or suspect that you have an occupational disease.

People disabled by occupational diseases receive the same benefits they would for an on-the-job accident. In the case of death, the dependents must file within two years of the date of death.

Occupational Hearing Loss

The law states a different time period to file a claim for occupational hearing loss than from other disabilities. A waiting period must pass before you file a claim. That period is your choice of

- Three months after leaving the employment where you were exposed to the harmful noise, or
- Three months from the date you're removed from the harmful noise in the workplace. Removal can include wearing protective gear, so ask for it at work. You can contact OSHA at 1-800-321-OSHA for help if necessary.

The Board will consider the last day of whichever period you choose as the date of disability in determining when your benefits begin.

Occupational hearing loss claims have different time limits. You may file beyond the typical two-year limit if you do it within 90 days of learning the hearing loss is job-related.

Wage Replacement (Cash) Benefits

Claimants who are totally or partially disabled for more than seven days receive benefits for lost wages. The amount you receive is based on your average weekly wage for the 52 weeks prior to the date of injury, including overtime. It's based on your gross earnings, not your take-home pay. The Board will use two-thirds of your average weekly wage, and then adjust it by the extent of your disability:

$$2/3 \times \text{average weekly wage} \times \% \text{ of disability} = \text{weekly benefit}$$

The weekly maximum benefit is two-thirds your average weekly wage. If you suffer a total disability, you get two-thirds your weekly wage, up to the maximum (see below). For example, if you earn \$750 per week and are totally (100%) disabled as of today, you receive two-thirds of \$750, or \$500 per week. You're 100% disabled, so you receive all of the benefit.

If you're 50% disabled and earned \$750 per week, your benefit is \$250. To calculate it: two-thirds your \$750 average weekly wage equals \$500. Then, because you are 50% disabled, your benefit is half of \$500, or \$250.

The benefit rate is computed the same way, whether you are temporarily or permanently disabled. The maximum weekly wage benefit is based on accident date. It does not increase as maximum benefits increase.

Schedule of Benefits

Date of Accident	Weekly Maximum Total / Partial
July 1, 2016 - June 30, 2017	\$864.32 / \$864.32
July 1, 2015 - June 30, 2016	\$844.29 / \$844.29
July 1, 2014 - June 30, 2015	\$808.65 / \$808.65
July 1, 2013 - June 30, 2014	\$803.21 / \$803.21
July 1, 2012 - June 30, 2013	\$792.07 / \$792.07
July 1, 2011 - June 30, 2012	\$772.96 / \$772.96
July 1, 2010 - June 30, 2011	\$739.83 / \$739.83
July 1, 2009 - June 30, 2010	\$600 / \$600
July 1, 2008 - June 30, 2009	\$550 / \$550
July 1, 2007 - June 30, 2008	\$500 / \$500
July 1, 1992 - June 30, 2007	\$400 / \$400
July 1, 1991 - June 30, 1992	\$350 / \$350
July 1, 1990 - June 30, 1991	\$340 / \$280
July 1, 1985 - June 30, 1990	\$300 / \$150

If you're disabled more than 14 days, you may get wage benefits from the first day. Otherwise, the first 7 calendar days of the disability are not covered. Medical care for your injury is provided as long as it's needed, as determined by the Board.

Note: If the insurer disputes your case, it may withhold your wage replacement benefit until the Board directs it to pay you.

Reduced Earnings Benefits

If you can return to work but your injury keeps you from earning the same wages you once did, you may be entitled to a benefit that will make up two-thirds of the difference. These are reduced earnings benefits.

Disability Classifications

Your doctor will state how much your injury disables you. The insurer may disagree with that judgment. That insurer can require you to see a doctor it chooses for an *independent medical exam*. The Board will decide how disabled you are (the *degree of disability*) from among those opinions. Your lost wage benefit is based on degree of disability. There are four classes.

Temporary Total Disability You cannot work and earn wages, but only on a temporary basis. You're entitled to the full allowable wage benefit.

Temporary Partial Disability You've temporarily lost some ability to work and earn full wages. You'll receive a percentage of your salary equal to the percentage of disability. For example, if you're 25% disabled, you'll get 25% of your award, for the time you're disabled.

Note: All injuries, even those later found *permanent*, are first *temporary*. All benefits are also subject to the maximum weekly amount.

Permanent Total Disability You completely lost the ability to work and earn wages. **There's no limit on the number of weeks of benefits.**

Permanent Partial Disability, Nonschedule Loss

You lost some part of your ability to work. If you were injured before March 13, 2007, you can get benefits as long as the disability results in wage loss. Injuries after then may receive up to 10 years of benefits, as shown below. (You can apply for reclassification, and additional benefits, after that period.) Even if the disability doesn't impact wages, medical care is always paid.

Permanent Partial Disability, Schedule Loss

This category involves loss of arm, hand, finger, leg, foot and toe or their use, and loss of eyesight or hearing. The law specifies the number of weeks in benefits you receive for this loss.

Disfigurement

People whose faces, head or neck are permanently disfigured may get up to \$20,000, depending upon the extent of injury and date of accident.

Resolving Disputed Claims

Insurers will often accept a claim and promptly begin paying benefits. However, an insurer can dispute a claim, for various reasons. It may not agree you were injured, it may not believe the injury occurred while it provided insurance, or any number of other situations. Board claims examiners and conciliators first attempt to resolve issues. If they can't, the Board will hold hearings in front of a workers' compensation law judge. The judge takes testimony, reviews your medical records and wages. Then, the judge decides the issue, and sets the amount of any award.

Either side may appeal that decision. This must be done in writing within 30 days of the decision. Three Board commissioners review appealed cases. They may agree, change part of a decision, or reject it. They may also return the case for more hearings. Insurers don't have to pay lost wage benefits while the case is being reviewed by the three commissioners. An insurer can accept part of a case and appeal another. In that instance, it must pay the accepted part of the award while the case is reviewed. The insurer must pay your wages and medical bills if your award is upheld by those commissioners, even if it appeals further.

Either side may appeal that decision, to the full Board of workers' compensation commissioners. If the full Board takes the case, it will either agree, change or overturn the decision.

Appeals from Board decisions may be taken within 30 days to the Appellate Division, Third Department, Supreme Court of the State of New York. That decision may be appealed in the Court of Appeals.

You always have the right to an attorney or licensed representative. That person may not ask for or take a fee from you. The Board determines the fee for legal services.

That fee is deducted from the lost wages award.

Disability Benefits During a Dispute

If you aren't receiving benefits because your claim was disputed, you may get disability benefits in the meantime. You can file a DB-450 form, available from www.wcb.ny.gov and click *Workers*, or by calling **1-800-353-3092**. You pay back any disability payments from your lost wage benefits.

Death Benefits

There is a benefit for the family of workers who die from an injury or illness suffered on the job. The benefit is payable whether the worker dies right after an injury or later.

The worker's spouse and children will receive two-thirds of the employee's average weekly wage, up to the weekly maximum amount. The spouse and children share that weekly benefit; they do not each receive the full benefit. Children receive the benefit until age 18, or until 23 if they attend college. If a child is blind or physically disabled, he or she will receive the benefit for life. The spouse receives the benefit until remarriage. If the spouse remarries, he or she gets a final payment equal to two years of benefits.

The benefit is payable first to a spouse and minor children or dependent grandchildren. If there are no other dependents, then a different benefit is paid. The surviving parents or the deceased worker's estate may be entitled to \$50,000. Funeral expenses may also be paid. That benefit is up to \$6,000 in metropolitan New York counties, and up to \$5,000 in all others.

Social Security Benefits

Your injury or illness may entitle you to Social Security Disability benefits, as well as workers' compensation. People with a permanent disability or a disability that lasts at least 12 months may qualify. Contact a Social Security Office to learn more.

Discrimination

An employer may not fire you or hold it against you if you file a workers' compensation claim. You're also protected from retaliation for testifying in a workers' compensation case. Employers may not discriminate against you in hiring, too. You have two years to make a discrimination complaint. File Form DC-120 with the Board. You can call a Board office for the form, or find it at www.ny.gov and click *Forms*.

If the Board finds that a worker was improperly fired, it will order the employee restored. The employee will also receive back pay lost by that discrimination.

AMERICANS WITH DISABILITIES ACT

The 1990 Americans with Disabilities Act prohibits discrimination against people with disabilities in employment. It ensures equal access to government services, public accommodations, transportation, and telecommunications. This law can help injured employees who want to return to work. Call the NYS Commission on Quality of Care and Advocacy for Persons with Disabilities at 1-800-949-4232 for more information.

A Timeline for Your Case

Immediately: Get medical treatment. Tell your supervisor about the accident and how it occurred. You must also notify your employer of the accident, in writing, within 30 days. You should file a C-3 form with the Board, too.

Within 48 hours of treatment: Your doctor files a medical report with the Board. Copies must also be sent to you and your representative, and to the employer or its insurance carrier.

Within 10 days of accident: The employer reports the injury to the Board and the insurer.

Within 14 days of receiving accident notification: The insurer gives you a written statement of your legal rights within 14 days of learning of the accident or with the first check, whichever is earlier. If you must use its provider network, the insurer must also give you that contact information.

Within 18 days of accident: The insurer must accept your claim or explain why it disputes it. It must inform you, any representative and the Workers' Compensation Board. If you didn't notify the employer promptly, it must act within 10 days of learning of the accident. If the case is disputed and you're losing time from work, file for disability benefits.

Every 2 weeks: The insurer pays lost wage benefits to you (if the case is accepted). It will pay your healthcare providers directly. The insurer must notify the Board if it stops or modifies your benefits.

Periodically: See your doctor and get treatment as recommended. The doctor will submit progress reports to the Board and insurer.

Common Questions about the Law

Q. What is covered under Workers' Compensation Law?

A. Injuries on the job and work-related illnesses, as well as occupational diseases.

Q. What if I don't file a claim for workers' compensation?

A. You may lose the right to benefits for lost wages and medical care. You should file a C-3 reporting your own injury or illness, even though your employer's insurer must notify this Board when it accepts or disputes your case.

Q. How is the cash benefit for temporary total disability determined?

A. The temporary total disability benefit is two-thirds of the average weekly wage you earned in the year before the accident. There is a maximum amount you can receive per week (see page 6). Your maximum benefit is set by what is in effect **on the date of the injury**.

Q. Is medical care provided even if no time is lost from work?

A. Yes. Medical care is provided for your condition even if no time is lost from work.

Q. Must I wait for medical care?

A. No, but physicians must request authorization to perform procedures that cost more than \$1,000 each. This \$1,000 threshold pertains to each procedure, not the total cost of care. Insurers must respond to the request within 30 days. Authorization is not necessary in case of an emergency.

Common Questions about the Law (continued)

Q. May a doctor treat me if the insurer does not answer a request for approval?

A. Yes. Insurers have 30 days to reply to an authorization request. If the insurer does not reply in 30 days, the provider may perform the services. If the service is a diagnostic test and the carrier requires claimants to use its network, the test must still be obtained from a network provider.

Q. Are prescription medications covered under the law?

A. Yes. Once your claim is established, pharmacies may bill the insurer directly. You may receive a card or document you can show a pharmacy stating you have coverage. If the carrier has a pharmacy network, it will tell you, and you must use those pharmacies. The only exceptions are in a medical emergency, or if the pharmacies don't offer mail order and there isn't a location reasonably close to you. You may have to pay the pharmacy for service before your claim is established. The carrier must then pay you when the case is established. There is no copayment.

Q. What happens when an insurance carrier contests a claim?

A. To contest a claim, a carrier must notify the Board within 18 days of the disability, or within 10 days of learning of the accident, whichever is later. The carrier must explain why it disputes the claim. You are then entitled to present your case to the Board. You will be notified of a pre-hearing conference. The Board seeks to resolve most cases within 90 days.

Q. Must I have a medical examination when the employer or insurer requests it?

A. Yes. The insurer may have you examined by a qualified provider who is authorized by this Board, within a reasonable distance for you to travel. Refusing this exam may affect your claim.

Q. May an insurer suspend or change the cash benefits?

A. Yes, but you are then entitled to a hearing. A carrier must submit evidence for the change to the Board, and the Board decides. A carrier may not change your benefit after the Board decides it without the Board's approval.

Q. Do I have to use an attorney?

A. No, but an attorney can be helpful in disputed and complex cases. You may represent yourself, or use an attorney or a licensed representative (see www.wcb.ny.gov for a list of licensed representatives). Fees are approved by the Board and deducted from your award. **Do not pay your counsel directly.**

Q. What can I do if I disagree with the Board's decision?

A. You may appeal in writing within 30 days of the filing date of the decision. You must explain why you disagree with the decision. Three Board commissioners will review your case. If you disagree with that review, you can appeal to the full Workers' Compensation Board of Commissioners. They may or may not consider it.

Q. What can I do if I'm not satisfied with the outcome of the appeal?

A. You may appeal to the Appellate Division, Third Department, within 30 days after a decision is served.

Q. Are there penalties for falsehoods in claims?

A. It's a felony to willfully misrepresent a case to obtain benefits. Penalties include up to seven years imprisonment and fines. You may also lose the right to benefits. It's also a felony for an insurer to raise a false issue in an attempt to deny a worker benefits it knows the worker is entitled to receive.

Directory of WCB Services and Board Offices

Board Services

Customer Service

1.866.750.5157

Advocate for Injured Workers

1.800.580.6665

Health Care Provider

1.800.781.2362

Fraud Referral Hotline

1.888.363.6001

Disability Benefits

1.800.353.3092

Board Offices

Albany District Office

100 Broadway - Menands
Albany, NY 12241
1.866.750.5157

Manhattan District Office

215 W. 125th Street
New York, NY 10027
1.800.877.1373

Binghamton District Office

State Office Bldg., 44 Hawley Street
Binghamton, NY 13901
1.866.802.3604

Peekskill District Office

41 North Division Street
Peekskill, NY 10566
1.866.746.0552

Brooklyn District Office

111 Livingston Street
Brooklyn, NY 11201
1.800.877.1373

Queens District Office

168-46 91st Avenue
Jamaica, NY 11432
1.800.877.1373

Buffalo District Office

Ellicott Square Building
295 Main Street - Suite 400
Buffalo, NY 14203
1.866.211.0645

Rochester District Office

130 Main Street West
Rochester, NY 14614
1.866.211.0644

Long Island District Office

220 Rabro Drive, Suite 100
Hauppauge, NY 11788-4230
1.866.681.5354

Syracuse District Office

935 James Street
Syracuse, NY 13203
1.866.802.3730

Please send claims-related mail to:

PO Box 5205 • Binghamton, NY • 13902-5205

Employee Claim

C-3

State of New York - Workers' Compensation Board

Fill out this form to apply for workers' compensation benefits because of a work injury or work-related illness. Type or print neatly. This form may also be filled out on-line at www.wcb.ny.gov.

WCB Case Number (if you know it): _____

A. YOUR INFORMATION (Employee)

1. Name: _____
First MI Last
2. Date of Birth: ____/____/____
3. Mailing address: _____
Number and Street/PO Box City State Zip Code
4. Social Security Number: _____ - - 5. Phone Number: (____) _____ 6. Gender: ☐ Male ☐ Female
7. Will you need a translator if you have to attend a Board hearing? ☐ Yes ☐ No If yes, for what language? _____

B. YOUR EMPLOYER(S)

1. Employer when injured: _____ 2. Phone Number: (____) _____
3. Your work address: _____
Number and Street City State Zip Code
4. Date you were hired: ____/____/____ 5. Your supervisor's name: _____
6. List names/addresses of any other employer(s) at the time of your injury/illness: _____

7. Did you lose time from work at the other employment(s) as a result of your injury/illness? ☐ Yes ☐ No

C. YOUR JOB on the date of the injury or illness

1. What was your job title or description? _____
2. What types of activities did you normally perform at work? _____

3. Was your job? (check one) ☐ Full Time ☐ Part Time ☐ Seasonal ☐ Volunteer ☐ Other: _____
4. What was your gross pay (before taxes) per pay period? _____ 5. How often were you paid? _____
6. Did you receive lodging or tips in addition to your pay? ☐ Yes ☐ No If yes, describe: _____

D. YOUR INJURY OR ILLNESS

1. Date of injury or date of onset of illness: ____/____/____ 2. Time of injury: _____ ☐ AM ☐ PM
3. Where did the injury/illness happen? (e.g., 1 Main Street, Pottersville, at the front door) _____

4. Was this your usual work location? ☐ Yes ☐ No If no, why were you at this location? _____

5. What were you doing when you were injured or became ill? (e.g., unloading a truck, typing a report) _____

6. How did the injury/illness happen? (e.g., I tripped over a pipe and fell on the floor) _____

7. Explain fully the nature of your injury/illness; list body parts affected (e.g., twisted left ankle and cut to forehead): _____

YOUR NAME: _____
First MI Last

DATE OF INJURY/ILLNESS: ____/____/____

D. YOUR INJURY OR ILLNESS *continued*

8. Was an object (e.g., forklift, hammer, acid) involved in the injury/illness? ☐ Yes ☐ No If yes, what? _____
9. Was the injury the result of the use or operation of a licensed motor vehicle? ☐ Yes ☐ No
If yes, ☐ your vehicle ☐ employer's vehicle ☐ other vehicle License plate number (if known): _____
If your vehicle was involved, give name and address of your motor vehicle insurance carrier: _____
10. Have you given your employer (or supervisor) notice of injury/illness? ☐ Yes ☐ No
If yes, notice was given to: _____ ☐ orally ☐ in writing Date notice given: ____/____/____
11. Did anyone see your injury happen? ☐ Yes ☐ No ☐ Unknown If yes, list names: _____

E. RETURN TO WORK

1. Did you stop work because of your injury/illness? ☐ Yes, on what date? ____/____/____ ☐ No, skip to Section F.
2. Have you returned to work? ☐ Yes ☐ No If yes, on what date? ____/____/____ ☐ regular duty ☐ limited duty
3. If you have returned to work, who are you working for now? ☐ Same employer ☐ New employer ☐ Self employed
4. What is your gross pay (before taxes) per pay period? _____ How often are you paid? _____

F. MEDICAL TREATMENT FOR THIS INJURY OR ILLNESS

1. What was the date of your first treatment? ____/____/____ ☐ None received (skip to question F-5)
2. Were you treated on site? ☐ Yes ☐ No
3. Where did you receive your first off site medical treatment for your injury/illness? ☐ none received ☐ Emergency Room
☐ Doctor's office ☐ Clinic/Hospital/Urgent Care ☐ Hospital Stay over 24 hours
Name and address where you were first treated: _____
Phone Number: (____) _____
4. Are you still being treated for this injury/illness? ☐ Yes ☐ No
Give the name and address of the doctor(s) treating you for this injury/illness: _____
Phone Number: (____) _____
5. Do you remember having another injury to the same body part or a similar illness? ☐ Yes ☐ No
If yes, were you treated by a doctor? ☐ Yes ☐ No If yes, provide the names and addresses of the doctor(s) who treated you and **COMPLETE AND FILE FORM C-3.3 TOGETHER WITH THIS FORM:**

6. Was the previous injury/illness work related? ☐ Yes ☐ No
If yes, were you working for the same employer that you work for now? ☐ Yes ☐ No

I am hereby making a claim for benefits under the Workers' Compensation Law. My signature affirms that the information I am providing is true and accurate to the best of my knowledge and belief.

Any person who knowingly and with INTENT TO DEFRAUD presents, causes to be presented, or prepares with knowledge or belief that it will be presented to, or by an insurer, or self-insurer, any information containing any FALSE MATERIAL STATEMENT or conceals any material fact, SHALL BE GUILTY OF A CRIME and subject to substantial FINES AND IMPRISONMENT.

Employee's Signature: _____ Print Name: _____ Date: ____/____/____

On behalf of Employee: _____ Print Name: _____ Date: ____/____/____

An individual may sign on behalf of the employee only if he or she is legally authorized to do so and the employee is a minor, mentally incompetent or incapacitated.

I certify to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the allegations and other factual matters asserted above have evidentiary support, or are likely to have evidentiary support after a reasonable opportunity for further investigations or discovery.

Signature of Attorney/Representative (if any): _____ Date: ____/____/____

Print Name: _____ Title: _____

ID No., if any: R _____ If Licensed Representative, License No.: _____ Expiration Date: ____/____/____

WCB Case No. (if you know it): _____

To Claimant: If you received treatment for a *previous* injury to the same body part or for an illness similar to the one described in your current Claim, fill out this form. This form allows the health care providers you list below to release health care information about your previous injury/illness to your employer's workers' compensation insurer. The federal HIPAA law (Health Insurance Portability and Accountability Act of 1996) says you have a right to get a copy of this form. If you do not understand this form, talk to your legal representative. If you do not have a legal representative, the Advocate for Injured Workers at the Workers' Compensation Board can help you. Call: 800-580-6665.

To Health Care Provider: A **copy** of this HIPAA-compliant release allows you to disclose health information. If you send records to the employer's workers' compensation insurer in response to this release, also mail copies to the Claimant's legal representative. (If no legal representative is listed below, send copies to the Claimant.) Health care providers who release records must follow New York state law and HIPAA.

This release is:

- **Voluntary.** Your health care provider(s) must give you the same care, payment terms, and benefits, whether you sign this form or not.
- **Limited.** It gives your health care provider(s) permission to release only those health records that are related to the previous illness/condition you describe below.
- **Temporary.** It ends when your current claim for compensation is established or disallowed and all appeals are exhausted.
- **Revocable.** You can cancel this release at any time. To cancel, send a letter to the health care provider(s) listed on this form. Also, send a copy of your letter to your employer's workers' compensation insurer and the Workers' Compensation Board. *Note: You may not cancel this release with respect to medical records already provided.*
- **For records only.** It gives your health care provider(s) listed on this form permission to send copies of your health care records to your employer's workers' compensation insurer.

This form does NOT allow your health care provider(s) to release the following types of information:

- **HIV-related information**
- **Psychotherapy notes**
- **Alcohol/Drug treatment**
- **Mental Health treatment** (unless you check below)
- **Verbal information** (your health care providers may not discuss your health care information with anyone)

Any medical records released will become part of your workers' compensation file and are confidential under the Workers' Compensation Law.

A. YOUR INFORMATION (Claimant)

1. Name: _____ 2. Social Security Number: _____ - _____ - _____
3. Mailing Address: _____
4. Date of Birth: ____/____/____ 5. Date of the current injury/illness: ____/____/____
6. Current injury/illness, including all body parts injured: _____
7. Your legal representative's name and address (if any): _____

☐ Check here if you allow your health care provider(s) to release **mental health care** information.

B. YOUR HEALTH CARE PROVIDER(S) (List all health care providers who treated you for a *previous* injury to the same body part or similar illness. If more than 2 providers attach their contact information to this form.)

1. Provider: _____ 2. Phone Number: (____) _____
3. Mailing Address: _____
4. Other provider (if any): _____ 5. Phone Number: (____) _____
6. Mailing Address: _____

C. READ AND SIGN BELOW. I hereby request that the health care provider(s) listed above give my employer's workers' compensation insurer copies of all health records related to any previous injury/illness, to all body parts, described above.

Claimant's signature (ink only -- use blue ballpoint pen, if possible.)

Date

If the claimant is unable to sign, the person signing on his/her behalf must fill out and sign below:

Your name

Relationship to Claimant

Signature (ink only -- use blue ballpoint pen, if possible.)

Date

Estado de Nueva York - Junta de Compensación Obrera (WCB)

WCB Case No. (if you know it) (Número de caso WCB [si lo sabe])

Al reclamante: Si usted recibió tratamiento por una lesión anterior en la misma parte del cuerpo o por una enfermedad similar a la que motiva ahora su reclamación, complete este formulario. Este formulario les permite a los proveedores de salud que usted señala a continuación divulgar a la compañía de seguros de compensación obrera de su empleador la información sobre su salud relacionada con su lesión/enfermedad anterior. La Ley federal HIPAA (Ley de portabilidad y responsabilidad del seguro de salud de 1996) establece que usted tiene derecho a recibir una copia de este formulario. Si no comprende este formulario, hable con su representante legal. Si no tiene un representante legal, el Representante de los obreros lesionados de la Junta de Compensación Obrera puede ayudarlo. Llame al 800-580-6665.

Al proveedor de salud: Una copia de esta divulgación, redactada según lo que establece la ley HIPAA, le permite divulgar información sobre la salud. Si envía los registros al asegurador de compensación obrera del empleador en respuesta a la presente divulgación, también debe enviar por correo copias al representante legal del reclamante. (Si a continuación no se especifica un representante legal, envíe las copias al reclamante). Los proveedores de salud que divulgan los registros deben cumplir con las leyes del estado de Nueva York y la HIPAA.

Esta divulgación es:

- **Voluntaria.** Su(s) proveedor(es) de salud deben otorgarle la misma atención, condiciones de pago y beneficios, independientemente de que usted firme este formulario o no.
- **Limitada.** Le otorga a su(s) proveedor(es) de salud permiso para divulgar únicamente los registros médicos que se relacionen con la enfermedad/afección anterior que usted describe a continuación.
- **Temporal.** Termina cuando se otorgue o desestime su actual reclamación de compensación y se hayan agotado todas las apelaciones.
- **Revocable.** Usted puede cancelar esta divulgación en cualquier momento. Para hacerlo, envíe una carta al (a los) proveedor(es) de salud que se indican en este formulario. Además, envíe una copia de su carta a la compañía de seguros de compensación obrera de su empleador y a la Junta de Compensación Obrera. *Nota: No podrá cancelar esta divulgación en lo que se refiere a registros médicos que ya se hayan provisto.*
- **Solamente para registros.** Le otorga a su(s) proveedor(es) de salud que se indica(n) en este formulario permiso para enviar copias de sus registros de salud a la compañía de seguros de compensación obrera de su empleador.

Este formulario NO autoriza a su(s) proveedor(es) de salud a divulgar los siguientes tipos de información:

- **Información relacionada con el VIH**
- **Notas de terapia psicológica**
- **Tratamientos por abuso de alcohol o drogas**
- **Tratamiento de salud mental** (a menos que usted lo indique a continuación)
- **Información verbal** (sus doctores no pueden hablar con nadie sobre su información de salud)

Los registros médicos divulgados se incorporarán a su expediente de compensación obrera y son confidenciales conforme a la Ley de compensación obrera.

CONTESTA LAS SIGUIENTES PREGUNTAS, EN INGLÉS SI ES POSIBLE, EN LOS ESPACIOS PROVISTOS Y FIRMA AL FRENTE DE LA FORMA.

A. YOUR INFORMATION (Claimant) INFORMACIÓN PERSONAL (Reclamante)

1. Name (Nombre) 2. Social Security Number (Número de seguro social)
3. Mailing Address (Dirección postal)
4. Date of Birth (Fecha de nacimiento) 5. Date of the current injury/illness (Fecha de la lesión/enfermedad actual)
6. Current injury/illness, including all body parts injured (Descripción de la lesión/enfermedad actual, incluyendo todas las partes del cuerpo lesionadas)
7. Your legal representative's name and address (if any) (Nombre y dirección de su representante legal [si corresponde])
- Check here if you allow your health provider(s) to release **mental health care** information. (Marque aquí si autoriza a su(s) proveedor(es) de salud a divulgar información sobre **tratamientos de salud mental**.)*

B. YOUR HEALTH CARE PROVIDERS (List all health care providers who treated you for a *previous* injury to the same body part or similar illness. If more than 2 providers, attach their contact information to this form.)

SU(S) PROVEEDOR(ES) DE SALUD (Enumere todos los proveedores de salud que le han tratado por lesiones previas a las mismas áreas del cuerpo ó por enfermedades semejantes. Si son más de 2 proveedores, adjunte su información de contacto a este formulario.)

1. Provider (Proveedor de salud) 2. Phone Number (Nº de teléfono)
3. Mailing Address (Dirección postal)
4. Other provider (if any) (Otro proveedor [si corresponde]) 5. Phone Number (Nº de teléfono)
6. Mailing Address (Dirección postal)

C. READ AND SIGN BELOW I hereby request that the health care provider(s) listed above give my employer's workers' compensation insurer copies of all health records related to any previous injury/illness, to all body parts, described above. **LEA Y FIRME A**

CONTINUACIÓN. Por la presente solicito que los proveedores de salud aquí enumerados le provean al asegurador de compensación obrera de mi patrono copias de todos los records médicos relacionados a cualquier lesión/enfermedad aquí enumeradas.

If the claimant is unable to sign, the person signing on his/her behalf must fill out and sign below: **(Si el reclamante no puede firmar, la persona que firme el formulario en su nombre y representación debe llenar y firmar a continuación)**

XX

Claimant's signature (Firma del reclamante) use solo tinta - preferiblemente azul Date (Fecha)

XX			
Your name (Su nombre)	Relationship to Claimant (Relación con el reclamante)	Signature (Firma)	Date (Fecha)



Understanding Your Schedule Loss of Use Award



**Workers'
Compensation
Board**

NYS WORKERS' COMPENSATION BOARD
1 877 632-4996
www.WCB.NY.Gov

WHAT IS A SCHEDULE LOSS OF USE AWARD?

A Schedule Loss of Use award (known as an **SLU**) is an additional cash payment. It pays you for an injury that leaves you with less ability in a body part than you had before the injury. If you don't get back the same level of use in the injured body part, because you now have a permanent disability, you may be eligible for an SLU payment.

This award is made after you've healed from your work-related injury. The point when you're as well as will get is called *Maximum Medical Improvement*. If you reach this point with less use of a body part than you had before the incident, you may receive an SLU award.

You can receive this money even if you never missed time from work or if you've already returned to work.

WHO DESERVES A SCHEDULE LOSS OF USE AWARD?

You may deserve an award if one or more of these body parts doesn't fully heal to where it was before the injury.

- Arm
- Toe
- Leg
- Eye (Vision Loss)
- Hand
- Ear (Hearing Loss)
- Foot
- Finger
- Face (Scar)/Neck/Scalp

Body parts may also include the wrist, elbow, shoulder, ankle, knee, and hip. Permanent injury to a body part may include: fractures, amputations, surgeries, tears, dislocations, second and third degree burns, crush injuries and severe nerve damage.

HOW MUCH IS A SCHEDULE LOSS OF USE AWARD?

The law states how many benefit weeks you'll receive. It's based on the body part and how much it was damaged. You'll get a certain number of weeks of payment to make up for the permanent injury. For example:

1. The law allows 312 weeks for an arm injury.
2. You lost 25% of the use of your arm.
3. 25% of 312 weeks = 78 weeks.
4. You earn \$900 weekly. Two-thirds your average weekly wage (your workers' compensation rate) is \$600.
5. \$600 a week for 78 weeks = \$46,800 to you.

HOW DO I GET A SCHEDULE LOSS OF USE AWARD?

A doctor's opinion is needed. Ask your doctor when you've reached maximum medical improvement. If your injury is permanent, your doctor will state how much less you can use that body part. It'll be a percentage: 25%, 50%, and so on. The doctor will file that opinion with the Board.

WHAT HAPPENS AFTER MY DOCTOR SUBMITS A REPORT?

Make sure your doctor sends a report to the Board. The Board reviews all medical reports. If your doctor and the insurer's doctor agree on the amount of loss you suffered, that becomes the number of weeks of payment you'll get.

If the Board gets only one medical opinion, it will write to you and the insurer, asking for the other. You have 60 days to get a report. The insurer has 90 days to get a report. If we don't get the other medical report from you in 60 days, or from the insurer in 90 days, the Board will decide based on the one medical report in your file. Be sure your doctor sends a report to the Board.

WHAT IF THE DOCTORS DISAGREE ON MY HEALTH?

If your doctor and the insurer's doctor disagree, the Board will decide. You may be asked for more documents, and you may have a hearing. (You'll receive a notice with the date, time and place of the hearing.) There, the judge will try to resolve the dispute or schedule a trial.

In either case the judge will render a decision. The insurer has 10 days to pay the award after the final decision.

HOW ARE AWARDS PAID?

If your award is worth more than the payments you already received for that injury, an SLU award is paid one of two ways.

1) You'll get your regular workers' compensation checks until the SLU award is fully paid, or

2) You can write to the Board and ask for the rest of the SLU payment in a lump sum. The Board will direct the insurer to pay you the rest of the money in one check.

SPEAKING UP FOR YOU:

THE ADVOCATE FOR INJURED WORKERS

The Advocate for Injured Workers helps injured workers get the benefits they deserve under the law. This office will help you with your case and can explain a schedule loss of use claim. When calling the Advocate, please have:

- Claimant's Name
- Claimant's Board Case Number
- Telephone Number, with Area Code
- Brief Description of the Issue
- Any Documents or Letters Received

To reach the Advocate, call [1-800-580-6665](tel:1-800-580-6665).

Here's What Will Happen

**INJURY TO
ELIGIBLE
BODY PART**

YOU SEE YOUR DOCTOR

**DOCTOR FINDS
YOU ARE AS WELL
AS YOU'LL GET**

YOUR
REPORT
FILED

**BOARD USES
MEDICAL
REPORTS TO
SET PAYMENT**

BOARD MAKES AWARD

**YOU RECEIVE
PAYMENT**

Maximum Possible Compensation

MEMBER LOST

WEEKS OF COMPENSATION

ARM	..... 312 / \$269,667.84
LEG	..... 288 / \$248,924.16
HAND	..... 244 / \$210,894.08
FOOT	..... 205 / \$177,185.60
EYE	..... 160 / \$138,291.20
THUMB	..... 75 / \$64,824.00
FIRST FINGER	..... 46 / \$39,758.72
SECOND FINGER	..... 30 / \$25,929.60
THIRD FINGER	..... 25 / \$26,608.00
FOURTH FINGER	..... 15 / \$12,648.00
GREAT TOE	..... 38 / \$32,844.16
OTHER TOE	..... 16 / \$13,829.12

QUESTIONS?

Call the NYS Workers' Compensation Board at [1-877-632-4996](tel:1-877-632-4996). We're available:

Monday - 8:30 AM to 4:30 PM

Tuesday, Wednesday - 8:30 AM to 6:00 PM

Thursday, Friday - 8:30 AM to 4:30 PM

www.WCB.NY.Gov

General_Information@WCB.NY.Gov

How to File a Claim

If you are injured on the job, you should complete the Board's form Employee Claim (C-3) as soon as possible to ensure your benefits are not delayed or interrupted. You must also notify your employer in writing of when, where and how you were injured or became ill.

There are several ways to file the Employee Claim (C-3) form.

- Complete the web version of the Employee Claim (C-3) form.
- Call 1-866-396-8314, and someone from the Board will help you fill out the form.
- File a paper Employee Claim (C-3) form.
 - You may obtain a paper Employee Claim (C-3) form by visiting any Customer Service Center or District Office; by printing form Employee Claim (C-3); or by calling (877) 632-4996, and the Board will mail you one.
 - If you submit a paper form, please mail the completed Employee Claim (C-3) form to the District Office nearest you.

You will be notified by mail of any action regarding your claim.

Remember: You must file a claim within two years of the accident. You must also notify your employer if you are hurt on the job.

Death Claims

When a claimant has passed away at work or due to an existing work injury/illness, the Next of Kin should file a C-62 (with the appropriate documentation) to the Board. The form C-64 would need to be filed by the last treating physician stating how the deceased death is causally related to work (or the previous work injury). The C-65 would be completed by the funeral Home.



SOCIAL SECURITY

- WHY FILE FOR SOCIAL SECURITY DISABILITY BENEFITS?
- DISABILITY BENEFITS

WHY FILE FOR SOCIAL SECURITY DISABILITY BENEFITS?

I am frequently asked similar questions from people inquiring about Social Security Disability ("SSD") benefits, for instance:

- Why bother filing, I will just be denied?
- Don't you have to be completely bed-ridden to get approved for SSD?
- I was out of work for only 2 years, I don't qualify for benefits right?
- Don't I have to wait a year before filing for SSD benefits?
- I don't want to be on welfare, this is welfare right?
- I can't afford a lawyer to represent me so I can't file right?
- Doesn't this affect my benefits at age 65?
- If awarded, what do I get for me and my family?

Invariably, the same people that ask these questions end up filing for SSD benefits and many end up receiving vital monthly compensation for themselves and their families. The fact is, Social Security Disability is a tremendous resource for injured workers and should be utilized by the disabled in the event of serious injury. So, the following represents some of the common Social Security answers that you can relay to your members when they are injured?

WHY BOTHER FILING, I WILL JUST BE DENIED?

It is true that many people who file SSD applications are denied on the initial application. It is also true that it is more likely that you will be denied on an application if you are less than 50 years old. However, this should never stop anyone from filing an application for SSD. First, as is a common adage in the law, every case is individual and no one should assume approval or denial based on other people's cases. Second, although the majority of cases are denied on the application, a very high percentage of those same cases are approved on appeal before a Social Security judge. SSD judges are well versed in the law and medicine involved your case and with the right legal arguments, your case can be won!

DON'T I HAVE TO BE COMPLETELY BED-RIDDEN TO BE APPROVED FOR SSD?

No! Social Security Disability requires that a claimant be "unable to perform substantial gainful activity"; simply put, you have to be unable to work. So, the question isn't "are you unable to do anything because of your disability?"; but instead is "are you unable to work due to your disability?" An inability to work can be proven even if you are able to perform many normal activities of daily living. Judges and lawyers look for very specific symptoms and limitations in attempting to prove your ability to work; you do not have to be "bed-ridden" to get SSD benefits.

CAN I GET SSD BENEFITS IF I WAS ONLY OUT OF WORK FOR 2 YEARS?

Yes! Social Security requires that a claimant be out of work, or be expected to be out of work, for at least 12 months to be eligible for SSD benefits. That means that if a claimant is out of work for at least twelve months but goes back to work, they can still be eligible for a lump sum of disability benefits for the time they were out of work. This is known as a "Closed Period" claim. For example, assume one of your members was out of work for 16 months due to a back injury, but did return to work in a full duty capacity thereafter. That member would be entitled to collect SSD benefits for the time they were out of work regardless of their current work status. For many workers, this year of past due benefits could

approximate \$20,000. Bottom line, a claimant can receive "Closed Period" SSD benefits even if they are back to work.

DON'T I HAVE TO WAIT A YEAR BEFORE FILING FOR SSD?

No! If you have a serious injury that is expected to keep you out of work for at least one year you can, and should, file for SSD as early as possible. In New York it may take as long as 2 years to see a judge; filing an application early can save the claimant from severe economic hardship.

ISN'T SSD A WELFARE BENEFIT?

No! SSD is a federally secured retirement plan for people who accumulate enough work credits during their career but are unable to continue to work due to disability. Your tax dollars have helped fund this retirement package. Although Social Security does have a welfare component for people who haven't worked, known as Supplemental Security Income ("SSI"), SSD is not a welfare benefit.

I CAN'T AFFORD A LAWYER TO REPRESENT ME SO I CAN'T FILE, RIGHT?

Wrong! Attorneys representing claimants in SSD are paid on a contingency fee basis, meaning they only get paid if they win your case! In fact, all SSD attorneys are mandated by the Social Security Act to charge the same fee. And, to ensure an attorney is paid the right amount Social Security pays the attorney directly from a claimant's past due benefits. You never even have to write a check to your lawyer! All claimants can afford an attorney in an SSD case!

IF I RECEIVE BENEFITS NOW, DOES IT AFFECT MY BENEFITS AT AGE 65?

No! If a claimant continues to receive SSD benefits up until their full retirement age they will continue to receive the increased disability rate after age 65. If a claimant receives a "Closed Period" of benefits, such benefits will have no impact on their "old age" retirement benefits upon retirement.

WHAT TYPE OF BENEFITS WILL I RECEIVE?

Depends. Your disability benefit depends on how much you have paid into the system over the years. Those figures are then placed into a mathematical equation written into the Social Security Act and a number is generated. What is certain is that if you have any minor children, they are entitled to $\frac{1}{2}$ of your benefit amount in addition to your benefit, up to a "household maximum." For example, if a claimant is entitled to \$1500 per month from SSD and has one child under 18, they would be entitled to \$2250 per month in SSD benefits.

For a rough estimate of a claimant's disability benefit amount look at their annual statement from the Social Security Administration. If a claimant has minor children, be sure that they look under the "Family Household Maximum" amount to find out the maximum monthly benefit that Social Security will pay.

If you have any questions please don't hesitate to contact us any time at (631) 665-0609.



Fact Sheet

SOCIAL SECURITY

2018 SOCIAL SECURITY CHANGES

Cost-of-Living Adjustment (COLA):

Based on the increase in the Consumer Price Index (CPI-W) from the third quarter of 2016 through the third quarter of 2017, Social Security and Supplemental Security Income (SSI) beneficiaries will receive a 2.0 percent COLA for 2018. Other important 2018 Social Security information is as follows:

Tax Rate	2017	2018
Employee	7.65%	7.65%
Self-Employed	15.30%	15.30%

NOTE: The 7.65% tax rate is the combined rate for Social Security and Medicare. The Social Security portion (OASDI) is 6.20% on earnings up to the applicable taxable maximum amount (see below). The Medicare portion (HI) is 1.45% on all earnings. Also, as of January 2013, individuals with earned income of more than \$200,000 (\$250,000 for married couples filing jointly) pay an additional 0.9 percent in Medicare taxes. The tax rates shown above do not include the 0.9 percent.

	2017	2018
Maximum Taxable Earnings		
Social Security (OASDI only)	\$127,200	\$128,700
Medicare (HI only)	No Limit	
Quarter of Coverage		
	\$1,300	\$1,320
Retirement Earnings Test Exempt Amounts		
Under full retirement age	\$16,920/yr. (\$1,410/mo.)	\$17,040/yr. (\$1,420/mo.)
NOTE: One dollar in benefits will be withheld for every \$2 in earnings above the limit.		
The year an individual reaches full retirement age	\$44,880/yr. (\$3,740/mo.)	\$45,360/yr. (\$3,780/mo.)
NOTE: Applies only to earnings for months prior to attaining full retirement age. One dollar in benefits will be withheld for every \$3 in earnings above the limit.		

Beginning the month an individual attains full retirement age	None
---	------

	2017	2018
Social Security Disability Thresholds		
Substantial Gainful Activity (SGA)		
Non-Blind	\$1,170/mo.	\$1,180/mo.
Blind	\$1,950/mo.	\$1,970/mo.
Trial Work Period (TWP)	\$ 840/mo.	\$ 850/mo.
Maximum Social Security Benefit: Worker Retiring at Full Retirement Age		
	\$2,687/mo.	\$2,788/mo.
SSI Federal Payment Standard		
Individual	\$ 735/mo.	\$ 750/mo.
Couple	\$1,103/mo.	\$1,125/mo.
SSI Resource Limits		
Individual	\$2,000	\$2,000
Couple	\$3,000	\$3,000
SSI Student Exclusion		
Monthly limit	\$1,790	\$1,820
Annual limit	\$7,200	\$7,350
Estimated Average Monthly Social Security Benefits Payable in January 2018		
	Before 2.0% COLA	After 2.0% COLA
All Retired Workers	\$1,377	\$1,404
Aged Couple, Both Receiving Benefits	\$2,294	\$2,340
Widowed Mother and Two Children	\$2,717	\$2,771
Aged Widow(er) Alone	\$1,310	\$1,336
Disabled Worker, Spouse and One or More Children	\$2,011	\$2,051
All Disabled Workers	\$1,173	\$1,197



DISABILITY RETIREMENT

- FREQUENTLY ASKED QUESTIONS?
- PAYMENT OPTIONS
- CASE LAWS
 - ASSAULT
 - SLIP & FALL
 - HAZARDS
 - MEDICAL

Frequently Asked Questions

- **How do I correct/change my beneficiary information?**

If you wish to change, add or delete beneficiaries, you must complete a Designation of Beneficiary Form (RS5127) and return it to our Beneficiary Unit. Please list all beneficiaries you wish to designate. Remember, submitting a new designation of beneficiary form supersedes any previous designations.

- **How do I correct/change my address information?**

Notify us by completing the Change of Address Notification provided on Page 7 of your Statement. You can also complete our Change of Address Form (RS5512) and return it to us. Please note, while you may contact our Call Center to change your address, our Call Center agents cannot change an address to a PO Box or foreign address over the telephone.

- **How do I correct/change my name information?**

You can change your name by completing and submitting our Name Change Notice Form (RS5483). A signed letter requesting such a change is also acceptable; however, if a court order was required for the change, a copy of the court order must also be submitted.

- **How do I correct/change my date of birth information?**

If your date of birth is wrong, make a copy of your Statement, circle the mistake and send it to the Member & Employer Services Bureau's Registration Unit at 110 State Street, 5th Floor, Albany, NY 12244. Also include supporting documentation such as your birth certificate and a letter requesting that your DOB be corrected.

- **Why does my Statement indicate you haven't received any contributions from me this year?**

It's likely you are not required to contribute. Employees' Retirement System (ERS) Tier 5 members must contribute for all their years of public service (except state correction officers, who are required to contribute up to 30 years of service). Uniformed court officers and peace officers employed by the Unified Court System must contribute 4 percent; other Tier 5 members contribute 3 percent. However, members in Tiers 3 and 4 are only required to contribute until they either have ten years of membership or ten years of service credit, whichever comes first. Most Tier 1 and 2 members and some PFRS Tier 5 members don't contribute.

Please contact your employer if you have any questions. It is your employer's responsibility to let us know at the time of registration whether or not you must contribute.

- **Does my employer contribute toward my pension?**

Employers do not contribute to a member's individual account, rather, they are billed separately for their share of the costs to participate in the System.

- **Why didn't I receive my Member Statement?**

There are a number of reasons why you may not have received your Statement. If you are no longer on your employer's payroll, your Statement will be mailed to your home address. However, if the address we have on file for you is not current, you may not receive your Statement. The following are additional reasons why you may not have received your Member Annual Statement:

1. You had an open retirement case prior to May 1st. It is assumed that any member who has an open retirement case prior to May 1st is retiring and will no longer be an active member;
2. You are a member who was terminated since the end of the Fiscal Year, by either a Transfer or Withdrawal, or
3. Your date of membership was during the Fiscal Year, but no salary or days worked were reported.

Also, any member reported as having passed away will not receive a Statement.

- **Do I add the amount of service credited during the fiscal year to my estimated total service credit?**

No. The estimated service credit we have on record for you as of March 31, 2012, includes the service credit you earned from April 1, 2011 through March 31, 2012.

- **Why is my projected benefit on my Member Statement different from the estimate I received at a Consultation site or formal estimate in the mail?**

The projected benefit on your Statement tends to be lower than a projection you may have received at one of our consultation sites because the Statement projection is an automated calculation that only uses information we have on file for you as of March 31. Information Representatives at our consultation sites may add information supplied by you, such as sick leave accruals and lump sum payments, to the calculation of the projection. This information has not yet been verified with your employer, so it is not included in your Statement. The estimate you may have received in the mail after completing a Request for Estimate Form (RS6030) will not include payments for lump sum or sick leave credit, either. Nevertheless, because a retirement examiner audits all your salary and service information, it is an indispensable part of planning for the future.

- **Can I change where my Statement is mailed?**

No. Your Statement will automatically be mailed to your employer as long as you remain on the payroll. Your employer informs us of the mailing address we should use, and is responsible for distributing the Statement to you. If you leave public employment, we will mail your Statement to the home address we have on file for you.

- **How do I correct/change my salary information?**

The salary information was provided to us by your employer and represents reportable salary they paid you during the fiscal year. You may have received payments that cannot be used in calculating your pension and therefore were not reported to us. If you feel your salary information is not correct, please contact your payroll office. If there is a discrepancy, they must send us an adjustment report requesting a change. Remember, the information on your Statement is for the period beginning April 1, 2011 and ending the following March 31, 2012 so it will not correspond to the calendar year earnings on your W-2 statement.

- **How do I correct/change my service credit information?**

If you feel the amount of credit reported on your Statement is in error and you are eligible to retire within 18 months, you can request a formal estimate from us. Having us prepare an estimate on your behalf will ensure that all your service credit is accounted for. To request a formal estimate, please complete this Request for Estimate Form (RS6030) and return it to us.

- **How do I correct/change my Date of Membership/Date of First Credited Service information?**

If you believe any of this information is incorrect, please make a copy of your Statement, circle the mistake and return it to our Registration Unit at 110 State Street, 5th Floor, Albany, NY 12244. Also include any supporting documentation and a letter requesting that the information be corrected.

- **Why is my Date of First Credited Service different from my Date of Membership?**

Your Date of Membership (DOM) is when you actually joined the Retirement System. Your Date of First Credited Service is when your employer first reported that you were on his/her payroll, or when you received credit for the non-member service purchased prior to your DOM.

- **How do I get a reprint of my prior year's Member Statement?**

Unfortunately, at this time, we are unable to reprint your Statement from any year other than the current one.

- **How do I get a reprint of my current year's Member Statement?**

Reprints of your current year's Statement can be ordered once the Statement mailing is completed, usually in the middle of July. You may contact us directly to order your reprint.

- **How do I receive credit for my past service?**

If you feel you are missing service credit you are entitled to, you can apply for it by sending either a Request for Previous Service Form (RS5042) or a letter to our Member & Employer Services Bureau at 110 State Street, 5th Floor, Albany, NY 12244, that includes a full description of the service you are asking to be credited with. If we find that you are eligible to receive credit for previous service, we will notify you. Please note, sometimes there is a cost associated with receiving this credit. Also, while the purchase of such optional service may increase your retirement benefit, it will not change your date of membership or tier status.

- **There is a loan balance on my Statement. Why did my employer receive a letter to stop the deduction if the loan was not paid in full?**

We typically send a letter to employers approximately two to three months prior to your loan being repaid advising them when the final deduction should be taken from your paycheck to satisfy your loan. It is possible your employer ceased deductions too soon or did not send in enough with the final payment. You can call our Automated Information Line, at 1-866-805-0990 or 518-474-7736 in the Albany, New York area, to check your loan balance 24 hours a day, seven days a week.

- **Why is my service credit not up to date?**

The service credit reported in your Statement is what we have on record for you as of March 31, 2012, the end of our fiscal year.

- **Why does my Statement say I am not paying for past service? Am I supposed to be paying for past service?**

Not everyone has or pays for past service. If you worked for a participating employer before you joined the Retirement System, or have military service, you can request credit for this service. In some cases, there is a cost associated with receiving this credit. Or, if your employer did not deduct or deducted insufficient contributions from your paycheck after you became a Retirement System member, you would be required to make payments. For more information on past service, read our booklet, Service Credit for Tier 2, 3, 4 & 5 Members (VO1854).

- **Can I request a reprint for someone other than myself?**

No. Due to security concerns, unless you are authorized to act on a member's behalf in a legal or business matter, you cannot order a reprint for another person. Anyone who has the legal authority to act on a member's behalf must put their request in writing and send us a copy of their Power of Attorney (POA).

- **Why does it take so long to get a reprint of my Statement?**

We use an outside vendor for the reprint of Statements. The vendor prints and mails reprints every other week. Therefore, reprints typically take two to four weeks to be produced and mailed.

- **Can I see my Member Statement online?**

Much of the information you see on your printed Statement is also available on our website with our Retirement Online service. However, at this time, an exact copy of your printed statement is not available on our site.

- **Why doesn't my Member Statement list my estimated death benefit?**

If you have less than one year of total service credit, you would not have an estimated death benefit listed on your Statement. Similarly, if you are off the payroll of a participating employer and have less than ten years of service credit, your estimated death benefit would not be listed.

- **I work full-time for one public employer and part-time for another. Why was my Statement mailed to my part-time employer?**

If you work for more than one public employer, your Statement will be mailed to the employer who last reported your salary and service information to us. If more than one employer reported the information at the same time, the Statement will go to the employer who reported the most salary.

- **How is my Final Average Salary (FAS) calculated on the Statement?**

The FAS is one of three important components that will determine your retirement benefit. (Your plan and service credit are the other two.) The FAS on your Statement is an automated calculation that only uses information we have on file for you and does not assume increases in salary. It will be different from the FAS that is calculated when a retirement examiner audits all your salary and service information. Since there are different ways to calculate FAS, you should contact us regarding any inquiries you might have about your FAS calculation.

- **How do I get an estimate of my death benefit?**

You may send a written request to our Benefit Calculation and Disbursements Bureau. Requests for death benefit estimates should be mailed to the bureau's attention at the New York State and Local Retirement System, 110 State Street, Albany, New York 12244.

- **How much will the post-retirement death benefit be?**

If you are a Tier 2, 3, 4 or 5 member covered by Death Benefit two and you retire directly from service, your beneficiaries may be entitled to a post-retirement death benefit. This benefit is also available to you if you are a vested member and your date of retirement is within one year of leaving covered employment. During your first year of retirement, the benefit is 50 percent of the

ordinary death benefit payable at retirement; during your second year, it's 25 percent. During your third year and thereafter, it is 10 percent of the ordinary death benefit that would have been payable at age 60, or at retirement, whichever was earlier. If you joined the Retirement System after age 60, contact us for information about your death benefit.

- **Why isn't my service credit listed on my Statement?**

Because of the complexity of service crediting rules, we are not able to list service credit for Tier 1 members, PFRS members and members covered under special plans.

- **I just started working in public service and don't know much about the Retirement System. What can I do to learn more?**

The Retirement System website is a good place to learn about your benefits and get tips on planning for your retirement. If you are a Tier 5 member, you'll be especially interested in Members' Frequently Asked Questions about Tier 5. For the latest retirement news, sign up for E-News, our email newsletter.

- **Are Tier 5 members able to borrow against their contributions?**

Yes. They must have at least one year of member service credit and meet loan eligibility requirements.

- **My spouse and I are getting a divorce. What kind of an impact will that have on my beneficiary information?**

It is especially important to review your beneficiary designations to ensure your benefits will be distributed according to your wishes in the event of a divorce. Effective July 7, 2008, beneficiary designations for certain benefits are revoked when a divorce, annulment or judicial separation becomes final. For more information on how your pension benefits can be affected by divorce, review our Divorce FAQs.

- **Can ERS and PFRS Tier 5 members apply for reinstatement of a previous membership and tier?**

Yes. If you believe you may be eligible for reinstatement to a previous Tier 1 or 2 membership, you should complete an Application to Reinstate a Former Tier 1 or 2 Membership (RS5506-I). If you have a previous Tier 3 or 4 membership, please send a letter to our Member & Employer Services Bureau at 110 State Street, 5th Floor, Albany, NY 12244 providing us with as much information about your previous membership as possible (i.e. former retirement system, employer, job title, dates of employment and registration number).

- **Why do I need an Identification Card?**

With incidences of identity theft so prevalent in society, we're committed to doing our utmost to ensure the safety of our members' personal information. That's why we now include Member Identification Cards in the Member Annual Statements. Your ID card contains the unique registration number you have been assigned within the Retirement System. You should use this number, rather than your Social Security number, whenever you contact us. Just clip the card out and save it in a secure and easily accessible place so your registration number will always be handy.

Payment Options

At retirement, you must decide how you would like your retirement benefit paid. While there are several options from which to choose, all of them provide you with a monthly benefit for life. You may elect to have your retirement benefit paid to you as a Single Life Allowance (Option 0). This will provide you with the maximum amount payable during your lifetime, with nothing payable to your beneficiaries upon death. Or, you may elect to receive a smaller monthly benefit to provide for a possible payment to a designated beneficiary after your death. The following option choices are available:

Single Life Allowance (Option 0)

All Tiers: This is the basic retirement benefit. It provides for the maximum benefit payment to you each month for the rest of your life. But remember, under this selection all payments cease at your death. When you die (even if it is only one year, or sooner, after retiring), nothing will be paid to any beneficiary.

Cash Refund — Contributions (Option 1/2)

Tier 1 and 2 members with contributions on deposit: This option provides a reduced monthly benefit for your lifetime. At your death, any unpaid balance of your accumulated contributions will be paid to your beneficiary or your estate. If all of your accumulated contributions have been expended, all payments cease at your death.

Cash Refund — Initial Value (Option 1)

Tier 1 Only: This option pays a reduced monthly benefit for your lifetime. If you die before receiving retirement benefit payments equal to the initial value of your benefit, the balance will be paid to your beneficiary or estate in a lump sum.

Joint Allowance — Full*

All Tiers: This option provides a reduced monthly retirement benefit for your lifetime and is based on your and your beneficiary's birth dates. If you die first, your beneficiary will receive the same monthly amount (without COLA) for life. If your beneficiary dies before you, all payments will cease at your death.

Joint Allowance — Half*

Tiers 1 and 2: This option provides a reduced monthly retirement benefit for your lifetime. If you die first, your beneficiary will receive monthly payments equal to one-half of the amount (without COLA) you were receiving for life. If your beneficiary dies before you, all benefit payments will cease at your death.

Joint Allowance — Partial*

Tiers 3 and 4: This option provides a reduced monthly retirement benefit for your lifetime based on your life expectancy and that of your beneficiary. It requires that you select either 25, 50, or 75 percent of your benefit (without COLA) to be paid to your beneficiary for their life, after your death. If your beneficiary dies before you, all benefit payments will cease at your death.

Five Year Certain

All Tiers: This option provides a reduced monthly retirement benefit for your lifetime. If you die within five years of retirement, payments in the same amount (without COLA) you were receiving will be made to your beneficiary for the remainder of the five-year period.

Ten Year Certain

All Tiers: This option provides a reduced monthly retirement benefit for your lifetime. If you die within ten years of retirement, payments in the same amount (without COLA) you were receiving will be made to your beneficiary for the remainder of the ten-year period.

Pop-Up/Joint Allowance – Full*

All Tiers: This option provides a reduced monthly retirement benefit for your lifetime. If you die first, your beneficiary will receive the same amount (without COLA) for life. If your beneficiary dies first, your benefit will be increased to the amount you would have received if you had selected the Single Life Allowance at retirement and all payments will cease at your death.

Pop-Up/Joint Allowance – Half*

All Tiers: This option provides a reduced monthly retirement benefit for your lifetime. If you die first, your beneficiary will receive one-half of your benefit (without COLA) for life. If your beneficiary dies first, your benefit will be increased to the amount you would have received if you had selected the Single Life Allowance at retirement and all payments will cease at your death.

Alternative Options

If the options described here do not meet your needs, we will consider written requests for other methods. These requests must be outlined in detail by you and then approved by us for legal and actuarial soundness.

Service Retirement Options for PFRS Tier 2 Member:

You do not select an option until you apply for retirement benefits. The options available to you at retirement are listed below. The single life allowance is the full annual allowance you would receive for a date of retirement of 08/29/2004. The other options pay a reduced amount as shown by the percentages. The option percentages are based on a date of birth of 06/29/1964 and a beneficiary date of birth of 05/25/1965.

Any change to the date of birth, date of retirement or beneficiary date of birth may alter the percentages.

<u>Option Name</u>	<u>Percentages</u>	<u>Benefit Amount</u>
Single Life Allowance:	100.00%	\$56,000.00
+Joint Allowance - Full:	94.69%	\$53,026.40
+Joint Allowance - 75%:	95.96%	\$53,737.60
+Joint Allowance - Half:	97.27%	\$54,471.20
+Joint Allowance - 25%:	98.62%	\$55,227.20
*Five Year Certain:	99.94%	\$55,966.40
*Ten Year Certain:	99.70%	\$55,832.00
+Pop-up/Joint Allowance - Full:	94.48%	\$52,908.80
+Pop-up/Joint Allowance - 75%:	95.80%	\$53,648.00
+Pop-up/Joint Allowance - Half:	97.16%	\$54,409.60
+Pop-up/Joint Allowance - 25%:	98.56%	\$55,193.60

*Under these options you may have one or more beneficiaries and may change your beneficiary(ies) after retirement.

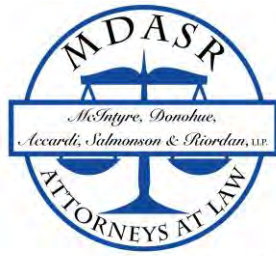
For all other options, the choice of a single beneficiary at retirement is irrevocable.

+If you choose one of these options and you predecease your beneficiary, who is at the time of death your spouse, 50% of the COLA benefit you would have received if you were alive, will continue to your spouse.

Note that for a retirement age of 40 you must be covered by a plan that allows retirement before age 55.

If you are a state correction officer retiring under a service benefit and have a date of membership preceding March 31, 1989, then there is a possibility that your five and ten year certain option factors could be slightly higher than those above.

If you are retiring under a service benefit and have a date of membership preceding March 31, 1989, then there is a possibility that your five and ten year certain option factors could be slightly higher than those above.



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& RIORDAN, LLP.**

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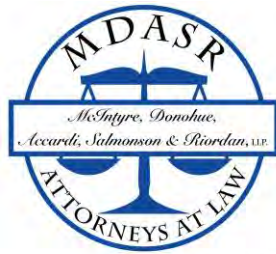
Dear Friends,

On Thursday, May 16th, the Appellate Division, 3rd Department issued a very important decision regarding Police ¾'s claims. The determination has far reaching implications for those permanently injured in the line-of-duty. I hope you will share this information with your memberships as it only adds to the importance of their initial "Injured Employee Paperwork."

The case, *Stancarone v. DiNapoli*, is the Appellate Division's response to the Court of Appeals' February decision in *Kelly v. DiNapoli*. For those not familiar with the Kelly case, the Court of Appeals found that a Police Officer, injured when a ceiling rafter collapsed upon him while he was attempting to rescue a family during a hurricane, was not entitled to a ¾'s pension. The ruling, and in a biting dissent, pointed out that the courts have been extremely inconsistent in their ¾'s determinations, specifically pointing to the varying determinations on what is, and is not, an "accident."

The 3rd Department, who has jurisdiction over Article 78 Appeals emanating from the N.Y.S. Retirement System, acknowledged at the outset "that the standard to qualify for accidental disability retirement benefits has not always been clearly stated, with part of the confusion stemming from the use of imprecise and differing language in prior cases." While the standard definition of "accident", "a sudden, fortuitous mischance, unexpected, out of the ordinary and injurious in impact" is not changed under the 3rd Department's decision in *Stancarone*, the 3rd Department set out a new way of analyzing these cases which will have lasting importance.

The first major change announced by *Stancarone* is a recognition of the Kelly decision's statement that "requiring a petitioner to demonstrate that a condition was not readily observable in order to demonstrate an "accident" is inconsistent with case law." The Court does away with the "readily observable" standard. In short, this directly impacts those "trip and fall" cases that have traditionally been held non-accidental when the officer could not show that the hazard they tripped and fell on was not "readily observable" and therefore could have been avoided. For example, an officer who slipped and fell on a staircase due to a juice box left on the stairs was denied his ¾'s because the judge found that the juice box was "readily observable" and therefore the officer slipping on it was his own "misstep" and not an "accident" for ¾'s purposes. Under *Stancarone*, the analysis of this hypothetical case is now different. Under *Stancarone*, the officer's "inattention" to the juice box which caused his fall cannot be used as the reason he is denied a ¾'s pension. Even if the condition that caused the fall is readily observable, if it was not seen prior to the injury it can be deemed an "accident" qualifying the officer for ¾'s. The effective elimination of the "readily observable" standard should enable a much fairer analysis of what constitutes an "accident" and bring it more in-line with the "common sense definition of accident" as the Court of Appeals envisioned when it defined "accident" in 1982 in the case *Lichtenstein v. Board of Trustees of Police Pension Fund of City of New York*.



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The second major analysis change announced in Stancarone is that the Retirement System must have a “specific information” in the evidentiary record that “a person in the petitioner’s position and location” could have reasonably anticipated the hazard which caused their injury. This finding goes to the “unexpected” nature of the event. For many years the Retirement System has denied ¾’s cases on the basis that an officer could have “reasonably anticipated” the hazard which caused their injury. As an example, the Court points to an officer who is injured due to a slip and fall on a slippery substance in a roadway. The Court stated unequivocally that “a blanket argument, such as “sometimes slippery surfaces exist in public roadways” is, alone, not enough to support a conclusion that the petitioner should have expected or reasonably anticipated the spot on which he or she slipped.” The court stated that a finding that the condition which caused the injury was “reasonably anticipated” must be supported by the “substantial evidence of record.”

The importance of this second change cannot be understated. Far too often an officer has been denied ¾’s because a Hearing Officer has issued a determination that the hazard presented was “reasonably anticipated” based on nothing but general conjecture and speculation. The Court now demands that the Retirement System analyze the micro-factors of the specific officer, the specific location and position of the officer at the time of the injury and explain why the hazard could have been reasonably anticipated by the individual officer.

As noted above, the Stancarone decision only adds to the importance of an officer’s initial injury paperwork. “Contemporaneous documentation” is still considered the most relevant, and accurate, description of the accident so getting it right remains the highest priority. Officer’s should take care to explain, where possible, such factors as:

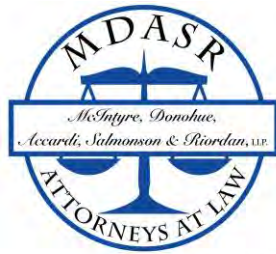
-Where their attention was when they were Injured - (i.e. “while searching for a suspect”);

-Lighting conditions - (i.e. “while searching for a suspect in a dimly lit back yard”);

-Their familiarity with the area- (i.e. “while searching for a suspect in dimly lit backyard that I have never previously been in before”); the specific hazard (i.e. “while searching for a suspect in a dimly lit backyard that I have never been in before I tripped and fell due to a large tree branch.”);

-A statement about the surrounding area - (i.e. “While searching for a suspect in a dimly lit backyard that I have never previously been in before I tripped and fell due to a large tree branch. I had not encountered any previous tree branches or other footing hazards in the backyard prior to my fall).

-Of course, all injuries are unique, and **any other factors which may be relevant** to why the officer could not have reasonably anticipated the hazard should be presented.



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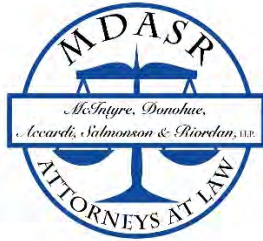
Understanding that many officers speed through the initial paperwork because they are 1) in pain and 2) very rarely believe that their injuries are career ending, I urge union officials and delegates to reach out to me (646-831-6229) or my partner Ed McIntyre (631-921-5499) at any time to ensure that an officer highlights the important factors surrounding his/her injury.

Be well and stay safe.

Sincerely,

Sean Riordan, Esq. and MDASR, LLP.

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January 2018 Delegate Handbook Update

Dear Friends, Happy New Year to you all. As I do each year, I wanted to update you on the new and important cases of 2017 coming out of the Appellate Division, 3rd Department that relate to ¾'s Accidental Disability Retirement ("ADR") so that you may properly guide your injured members. 2017 was a remarkably slow year for of the Appellate Division, with only 1 case dealing with what constitutes an "accident" under the Retirement & Social Security Law ("RSSL") being decided. I have included a second case which was decided 12/22/16 as well (just in case I didn't include the end of year decision in last year's update). Simply put, while the 2 cases present interesting fact patterns, the decisions handed down by the Court are not surprising and do not reflect major changes in the law. Lastly, a Correction Officer case regarding spinal surgery has impact throughout the state system and is worth reading.

Manning v. DiNapoli – Police Officer filed for ¾'s ADR based on 2 accidents. The first accident claimed was from an incident occurring in 2000 during response to an automobile accident. The Officer arrived at the scene of the MVA, exited her vehicle and walked over to individuals who were present at the scene. After taking some initial statements the officer decided to go back to her police vehicle in order to retrieve paperwork. During her walk back to her vehicle the officer stepped into a pothole in the roadway and fell to the ground. The pothole, it was testified, was a "couple of feet" in diameter.

The Court found that this incident is not an "accident" under the RSSL. Although the pothole clearly represents a hazard or defective condition, the officer failed to show that such hazard was not "readily observable" and therefore her trip over such pothole was not proven to be anything other than her own inattention or misstep. As I have relayed to you before, the Retirement System (and the Appellate Division) does not merely look at whether a hazardous or defective condition existed which caused an officer's fall, but instead ask the additional question of whether the condition was "foreseeable" by the reasonable person. Said another way, a hazardous or defective condition must be both unknown to the officer AND unknowable to a reasonable person in order to qualify for ¾'s benefits. Here, the fact that the officer had walked over the same path on her way to interview the witnesses at the scene; the size of the pothole and, apparently, no additional evidence or testimony as to why the pothole was otherwise "not observable" lead to an expected denial of her accident claim.

The second accident claimed by Manning falls into the same category as the first. The officer claimed a 2013 incident in which she was injured while working at her desk. While seated, the wheel of the officer's chair got caught in a "rut" in the floor, causing her chair to tip and, while attempting to prevent falling to the floor, the officer was injured. The "rut" in the floor was stated to be 8 inches in length and 1 ½ inches in depth. The officer testified that she was "generally aware" of the floors condition prior to the incident.

The Court again found that the hazardous condition, namely the relatively large “ruts” in the floor, was foreseeable. Not only were the holes in the floor knowable but the officer admitted to general knowledge of their existence prior to the incident. Therefore she had “actual knowledge” as well as “foreseeable knowledge” of the hazardous condition. Such an incident fails both prongs of the Hazardous Condition Test (as I call it) and therefore the denial of the ADR application is not unexpected.

Somuk v. DiNapoli - This December, 2016 ADR case also led to a denial of benefits, but also provides at least one positive in way of analysis. The officer in this case also claimed 2 accidents caused his disability. The first incident was during a traffic stop. The officer had stopped a vehicle for a “routine safety check” and while issuing a ticket to the driver was stuck by the side view mirror of a passing car. The officer missed approximately 8 ½ months from work before returning in a full duty capacity.

The positive in this case is that the state conceded that being struck by a car is an “accident” under the RSSL. The Court acknowledged the accident as well, stating “there is no dispute that the incident of 2007 constitutes an accident.” So, at least the generally accepted rule that MVA’s constitute “accidents” for ¾’s purposes remains in place. Unfortunately for the officer he was unable to prove that his permanent incapacity related to this accident, rather than the next claimed occurrence.

The officer also claimed an occurrence from 2010 when he was injured during the course of restraining a suspect. The officer had responded to a call of an individual, partially naked, running down the street and acting irrationally. In an attempt to restrain the suspect the officer took the individual to the ground. While attempting to place handcuffs on the suspect such suspect struck and kicked the officer, causing injury.

As expected, the court found that the officer “was performing his regular police duties of responding to a call and attempting to subdue an emotionally unstable individual at time that he was injured.” Essentially placing all officers on notice that physical altercation may occur flow from any interaction with an EDP the court stated “physical contact with this individual, including being struck and kicked, could certainly be anticipated and was an inherent risk of the work performed.” Although decisions of this nature continue to dismay most, the law has been clear on this point for many years. The simple way I always relay this issue to officers is this: Once an officer identifies someone as a suspect or someone with whom the officer wishes to speak, any violent action that that person takes against the officer thereafter is not considered an accident for ¾’s purposes. Terrible, but that is the way the law has been interpreted and applied.

Califano v. DiNapoli - Lastly, this Correction Officer case also has impact on Police Officers (as well as all members of State Retirement System). By way of background (as many of you have heard me speak on relentlessly) in approximately 2014 the Retirement System began requiring applicant’s for disability due to a spinal impairment to either have a spinal fusion, or reasonably justify refusal. This represented a monumental policy change at the time, placing spinal conditions within the same rules that the Retirement System had used for many years regarding other orthopedic conditions. For many years the System, backed by Court decisions, required those suffering from extremity impairments (shoulders/knees etc.) to undergo “reasonably safe and reasonably successful” surgery to try and repair their condition prior to being deemed “permanently incapacitated” for disability retirement. However, prior to 2014 the System did not place spinal fusion into the “reasonably safe and reasonably successful” category, thereby allowing applicants to be deemed permanently incapacitated without having fusion surgery. The System’s change caused many officers’ applications to be denied as many officers refused

surgery, considering spinal fusion to be an overly invasive surgery whose risks far out-weighted its benefits.

In Califano, the System's IME opined that multi-level spinal fusion may restore applicant to full duty status. Although all doctors of record believed that spinal fusion is considered a "reasonably safe" surgery today, disagreement arose out of "reasonable success." As I handled this case personally, I argued at trial and to the Appellate Division that "reasonable success" must be measured in this venue as the ability to restore one to full duty status. This was something that no doctor could show, and in fact our doctors testified that fusion surgery would not allow the applicant to return to the physically strenuous functions of Correction Officer work.

Unfortunately, the Court upheld the System's ruling that spinal fusion represents a "reasonable remedial procedure" which the System can require prior to finding a disability applicant permanently disabled. While we have dealt with this System policy for nearly 4 years at this point, it has now been confirmed by the Court. The impact is clear, if an officer is planning on seeking disability retirement due to a neck or back condition they must undergo spinal fusion where recommended by a doctor. Further, even if such surgery is not recommended by the officer's treating physician, if the IME finds that it MAY remediate the condition, the System can still deny the ADR application. The only way that we can get around this requirement is if we can otherwise "reasonably justify refusal" of the surgery. Fear of the surgery does not constitute reasonable justification as the surgery is considered "reasonably safe."

Bottom line, where an officer has a back or neck injury and their doctor has discussed spinal fusion surgery with them, they must pursue this surgery before the System will approve their ADR application.

Of course, they must follow their doctor's opinion and guidance regarding same, but without such surgery they risk denial of their application.

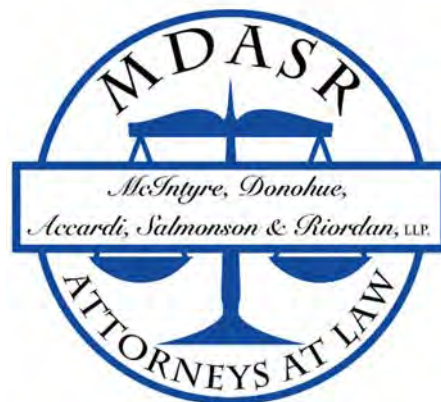
I hope that these updates are helpful in advising your members. Of course, I am always here to help and can be reached anytime at the numbers below.

I wish you all a wonderful 2018. Be safe.

Sean P. Riordan, Esq.

(p) 212-612-3198 (c) 646-831-6229 (f) 631-665-7409

sean@licomplaw.com



Petitioner worked as a police officer for 20 years. On September 14, 2007, he stopped a vehicle as part of a routine safety check and was issuing a ticket when he was struck in the mid-back by the side mirror of a passing motor vehicle. Petitioner received medical treatment for this injury and was out of work for approximately 8½ months, but he returned to work thereafter and was able to perform his regular job duties. On

August 19, 2010, petitioner and another officer responded to a call concerning a man who was acting irrationally and running down the street partially naked. The other officer managed to take the man to the ground and attempted to restrain him as he struggled violently. Petitioner was applying handcuffs when the man struck and kicked him, resulting in an injury to petitioner's lower back. Petitioner was unable to return to work following this incident.

Thereafter, petitioner applied for accidental disability retirement benefits with respect to both incidents and his application was denied by the New York State and Local Police and Fire Retirement System. Petitioner requested a hearing and, at its conclusion, the Hearing Officer upheld the denial, finding that the August 19, 2010 incident did not constitute an accident within the meaning of the Retirement and Social Security Law and that petitioner was not permanently incapacitated as the natural and proximate result of the accident occurring on September 14, 2007. Respondent adopted the Hearing Officer's decision and this CPLR article 78 proceeding ensued.

Initially, it is well settled that, for purposes of the Retirement and Social Security Law, an accident is "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 N.Y., Art II, 57 NY2d 1010, 1012 [1982] [internal quotation marks and citation omitted]; see Matter of Lamb v DiNapoli, 139 AD3d 1312, 1312-1313 [2016]). The burden is on the party seeking benefits to establish that the injury-producing event was an accident within the meaning of the Retirement and Social Security Law (see Matter of Magistro v DiNapoli, 142 AD3d 750, 751 [2016]; Matter of Schoales v DiNapoli, 132 AD3d 1184, 1185 [2015]). Notably, injuries that occur as the result of activities undertaken in the ordinary course of one's job duties or that are due to an inherent risk of the work performed have been found not to be an accident (see Matter of Kelly v DiNapoli, 137 AD3d 1470, 1471 [2016]; Matter of Beckley v Nitido, 123 AD3d 1330, 1331 [2014]).

With regard to the August 2010 incident, petitioner was performing his regular police duties of responding to a call and

attempting to subdue an emotionally unstable individual at the time that he was injured. Physical contact with this individual, including being struck and kicked, could certainly be anticipated and was an inherent risk of the work performed (see Matter of Fulton v New York State Comptroller, 122 AD3d 983, 984 [2014], lv denied 24 NY3d 915 [2015]; Matter of Quartucio v DiNapoli, 110 AD3d 1336, 1337 [2013]; Matter of Jarosz v DiNapoli, 95 AD3d 1500, 1501 [2012]). Accordingly, substantial evidence supports respondent's finding that this incident did not constitute an accident under the Retirement and Social Security Law.

Although there is no dispute that the September 2007 incident did constitute an accident, the issue is whether petitioner's permanent incapacitation was the natural and proximate result thereof. The burden is on petitioner to establish that it was (see Matter of O'Connor v DiNapoli, 89 AD3d 1367, 1368 [2011]; Matter of Caruana v DiNapoli, 78 AD3d 1302, 1303 [2010], lv denied 16 NY3d 705 [2011]). Here, although the record contains medical notes and related documentation prepared by physicians who treated petitioner after the two incidents in question, these physicians did not prepare medical reports addressing whether the September 2007 accident caused petitioner's permanent disability nor did they testify at the hearing (see e.g. Matter of Garceau-Scopelitis v New York State Comptroller, 24 AD3d 934, 936 [2005]). The only physician to provide a specific medical opinion in this regard was John Mazella, the orthopedist who prepared a written report after examining petitioner on behalf of the Retirement System. After reviewing the medical documentation, which indicated, among other things, that petitioner had made a full recovery and was able to return to full duty after the September 2007 accident, Mazella opined that such accident was not the competent producing cause of petitioner's disability. His opinion is consistent with the diagnostic reports revealing that petitioner sustained injuries to different portions of his spine following each incident. In view of the foregoing, substantial evidence supports the finding that petitioner's permanent incapacitation was not the natural and proximate result of the September 14, 2007 accident, particularly in the absence of medical evidence to the contrary (see generally Matter of Morgan v Hevesi, 46 AD3d 1007, 1008 [2007], lv denied 11 NY3d 701 [2008]). Accordingly, we find no

Egan Jr., J.P., Lynch, Rose and Aarons, JJ., concur.

ENTER:

Robert Maybarger

Robert D. Mayberger
Clerk of the Court

In September 2000, petitioner began working as a police officer for the Suffolk County Police Department. On December 14, 2007, after responding to the scene of an automobile accident, petitioner stepped into a pothole, tripped and fell to the ground. On February 27, 2013, while working at her desk, one of the wheels to her chair got caught in a rut in the floor

surface causing her chair to tip, and petitioner sustained injuries in her attempt to avoid falling to the floor. Thereafter, as a result of injuries that she sustained from these incidents, petitioner filed an application for accidental disability retirement benefits. Respondent New York State and Local Police and Fire Retirement System denied her application on the ground that neither the December 2007 incident nor the February 2013 incident constituted an accident within the meaning of the Retirement and Social Security Law.¹ A Hearing Officer upheld the denial of her application for the same reason, and respondent Comptroller subsequently adopted the Hearing Officer's decision. This CPLR article 78 proceeding ensued.

We confirm. "Injuries sustained due to conditions that are readily observable and that could be reasonably anticipated, or attributable to an employee's own misstep or inattention, do not constitute accidents within the context of the Retirement and Social Security Law" (Matter of Powers v DiNapoli, 144 AD3d 1380, 1381 [2016]; see Matter of Lamb v DiNapoli, 139 AD3d 1312, 1313 [2016]; Matter of Holden v DiNapoli, 122 AD3d 1105, 1106 [2014]). "The burden is on the party seeking benefits to establish that the injury-producing event was accidental in nature" (Matter of Magistro v DiNapoli, 142 AD3d 750, 751 [2016] [citations omitted]; see Matter of Rosenbergen v DiNapoli, 144 AD3d 1384, 1385 [2016]).

Regarding the incident of December 14, 2007, petitioner testified that after responding to an automobile accident on a highway and exiting her vehicle to speak to individuals present at the scene of the accident, she decided to return to her police car to obtain paperwork. As she was walking back to her vehicle traversing the same route that she had previously taken, petitioner "inadvertently" stepped into a pothole in the road and fell to the pavement. Petitioner explained that the pothole was oval shaped and a couple of feet wide in diameter. In our view, petitioner has failed to establish that the condition of the road

¹ Petitioner testified that she is no longer employed as a police officer and receives performance of duty disability retirement benefits.

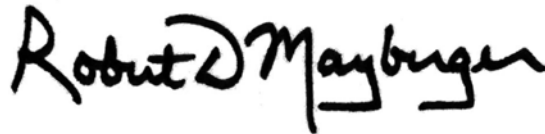
was not readily observable prior to her fall or that her fall was caused by anything other than her own inattention or misstep (see Matter of Yurko v DiNapoli, 122 AD3d 1047, 1048 [2014]; Matter of Madaffari v DiNapoli, 104 AD3d 1047, 1047-1048 [2013]; Matter of Piccinini v DiNapoli, 68 AD3d 1212, 1212-1213 [2009]; Matter of Coon v New York State Comptroller, 30 AD3d 884, 885 [2006], lv denied 7 NY3d 717 [2006]; compare Matter of Pratt v Regan, 68 NY2d 746, 747-748 [2006]).

Turning to the incident of February 27, 2013, petitioner testified that, while at her computer workstation desk, she was seated in her chair when one of its wheels got stuck in an elongated opening in the floor surface that was approximately eight inches in length and 1½ inches deep. As a result, her chair started to tip causing her to wrench her back in an effort to avoid a fall to the floor. Petitioner acknowledged that she was generally aware of the floor's condition, and she failed to otherwise establish that the condition of the floor in her desk area was not readily observable and apparent or that this incident was caused by anything other than her own lack of attention and misstep (see Matter of Quartuccio v DiNapoli, 110 AD3d 1336, 1337-1338 [2013]; Matter of Robinson v DiNapoli, 56 AD3d 943, 944 [2008]; Matter of O'Brien v New York State Comptroller, 56 AD3d 937, 938 [2008], lv denied 12 NY3d 708 [2009]; Matter of Brennan v New York State & Local Empls. Retirement Sys., 50 AD3d 1374, 1375-1376 [2008]; compare Matter of Meyer v New York State Comptroller, 92 AD3d 1122, 1123 [2012]). Under these circumstances, substantial evidence supports the Comptroller's finding that petitioner's injuries from the two incidents in question occurred as the result of her own misstep or inattention, and we therefore find no basis in the record before us to disturb the determination under review.

Garry, J.P., Lynch, Clark and Aarons, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R" and "M".

Robert D. Mayberger
Clerk of the Court

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 9, 2017

523251

In the Matter of CHARLES
CALIFANO,

Petitioner,

v

MEMORANDUM AND JUDGMENT

THOMAS P. DiNAPOLI, as State
Comptroller, et al.,
Respondents.

Calendar Date: January 10, 2017

Before: Garry, J.P., Rose, Devine, Clark and Mulvey, JJ.

Sherman Federman Sambur & McIntyre, LLP, Bay Shore (Sean Patrick Riordan of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondents.

Mulvey, J.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller denying petitioner's request for performance of duty disability retirement benefits.

Petitioner, a correction officer, applied for performance of duty disability retirement benefits (see Retirement and Social Security Law § 607-c) alleging that he was permanently incapacitated due to work-related injuries to his neck, back and right wrist sustained as a result of acts of inmates in March 2007 and March 2011. The application for benefits was initially

denied upon the ground that he was not permanently incapacitated from performing his duties as a correction officer. Petitioner requested a hearing and redetermination and, following a hearing, a Hearing Officer upheld the denial of the application.¹ Respondent Comptroller accepted the findings and conclusions of the Hearing Officer, and this CPLR article 78 proceeding ensued.

We confirm. "In connection with any application for accidental or performance of duty disability retirement benefits, the applicant bears the burden of proving that he or she is permanently incapacitated from the performance of his or her job duties" (Matter of Del Peschio v DiNapoli, 139 AD3d 1298, 1299 [2016] [internal quotation marks and citations omitted]; see Matter of Anderson v DiNapoli, 126 AD3d 1278, 1278 [2015]; Matter of Occhino v DiNapoli, 117 AD3d 1156, 1156 [2014])). "In determining whether a person is permanently disabled, [the Comptroller] may consider whether proper medical treatment is reasonably and safely available to correct the disability" (Matter of Dingee v DiNapoli, 56 AD3d 876, 877 [2008] [citation omitted]; see Matter of Cepeda v New York State Comptroller, 115 AD3d 1146, 1147 [2014], lv denied 23 NY3d 906 [2014]), and petitioner bears the burden of justifying refusal to consent to such treatment (see Matter of Quigley v Hevesi, 48 AD3d 1023, 1025 [2008]; Matter of Beckley v New York State & Local Retirement Sys., 43 AD3d 1267, 1268 [2007])).

At the hearing, petitioner submitted the medical reports of various treating physicians, in which they opined that petitioner was disabled and unable to perform the duties of the position of correction officer at the time of their examination. Mitchell Goldstein, petitioner's private orthopedist, reported that petitioner continued to have neck and back pain as a result of cervical and lumbar herniated discs with cervical radiculopathy, lumbar radiculopathy and lumbar stenosis and that, as a result of

¹ At the hearing, respondent New York State and Local Retirement System conceded that the incidents of March 2007 and March 2011 both constituted an act of an inmate and caused petitioner's injuries for purposes of petitioner's application for performance of duty disability retirement benefits.

petitioner's pain, limited range of motion and difficulty with activity of daily living, petitioner was totally and permanently disabled from performing his duties as a correction officer. Without expressing any view as to permanency, neurologists Ahmed Elfiky and Igor Stiller examined petitioner and each reported, consistent with the findings in Goldstein's report, that petitioner was totally disabled at the time of examination as a result of his injuries and unable to perform his duties as a correction officer. Stuart Kandel, an orthopedic surgeon who conducted an orthopedic evaluation of petitioner, also reported that petitioner was not capable of performing his duties as a correction officer; however, Kandel opined that petitioner had not yet reached the maximum medical improvement. Paul Brisson, an orthopedic surgeon specializing in spinal surgery, examined petitioner and also concluded that petitioner's injuries to his cervical and lumbar spine were "very symptomatic" and that, because his injuries had not "resolved over time with proper medication or conservative treatment," petitioner was totally disabled and could not resume his work as a correction officer. Brisson also reported, however, that petitioner "may benefit from an anterior and posterior lumbar fusion [surgery] of L4-5 and L5-S1."

In contrast, respondent New York State and Local Retirement System presented medical reports and testimony from John Killian, an orthopedic surgeon who reviewed petitioner's medical records and examined petitioner in June 2012 and June 2013. Following his initial examination of petitioner, Killian reported, among other things, that petitioner presented with no atrophy, asymmetry, deformity or muscle spasm of the cervical spine and, due to inconsistencies between imaging studies and petitioner's reported and observed pathology, that petitioner was "exhibiting symptom magnification for motivational purposes." Killian further reported that, given petitioner's exaggerated subjective complaints and age, it is "much too early to establish permanent disability." In his June 2013 addendum report prepared after reviewing additional medical documentation, Killian noted that there was no indication that petitioner followed up with a spinal surgeon or considered having surgery to decompress and stabilize his lower back. Killian expressed that petitioner exhibits a "potential for improvement" and that he is therefore not

permanently disabled from resuming his duties as a correction officer.

Relative to the possibility of corrective surgery, Killian testified that, notwithstanding petitioner's testimony describing his apprehension of corrective procedures, a bi-level fusion surgical procedure was available and suggested to petitioner that the procedure was a reasonable option with a significant likelihood of improvement that would allow petitioner to return to work at a normal capacity. Killian also opined that there is a "good chance" that, even without the surgery, petitioner would eventually recover and be able to resume working. Inasmuch as the Comptroller is vested with the authority to weigh conflicting medical evidence and credit the reports and testimony of Killian over the medical reports submitted by petitioner (see Matter of Aliperti v DiNapoli, 138 AD3d 1378, 1379 [2016]; Matter of Wilkinson v DiNapoli, 86 AD3d 851, 853 [2011]), we find that substantial evidence in the record supports the determination that petitioner's condition is not permanent and that he did not overcome his burden to demonstrate that he has exhausted reasonable remedial procedures available to him (see Matter of Borsilli v DiNapoli, 140 AD3d 1575, 1576 [2016]; Matter of Hulse v DiNapoli, 70 AD3d 1235, 1237 [2010]; Matter of Dingee v DiNapoli, 56 AD3d at 877; Matter of Quigley v Hevesi, 48 AD3d at 1025). We therefore discern no basis to disturb the determination denying petitioner's application for performance of duty disability retirement benefits. Finally, we have considered petitioner's remaining contentions and find them to be without merit.

Garry, J.P., Rose, Devine and Clark, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

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Robert D. Mayberger
Clerk of the Court

Assault

1379RT

Time of Request: Thursday, November 01, 2012 12:12:47 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 80

Job Number: 2825:378430060

Research Information

Service: Natural Language Search

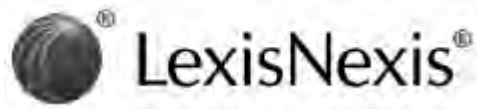
Print Request: Current Document: 44

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Although court denies claim - directly states that an Assault is an Accident- burden on plaintiff to establish the assault

Send to: Riordan, Sean
SHERMAN FEDERMAN SAMBUR & LEVINE
8 E MAIN ST
BAY SHORE, NY 11706-8334



44 of 99 DOCUMENTS

**In the Matter of ALEXANDER JAROSZ, Petitioner, v THOMAS P. DiNAPOLI, as
State Comptroller, Respondent.**

513948

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***95 A.D.3d 1500; 944 N.Y.S.2d 395; 2012 N.Y. App. Div. LEXIS 3710; 2012 NY Slip Op
3709***

**May 10, 2012, Decided
May 10, 2012, Entered**

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Bartlett, McDonough & Monaghan, White Plains (Ryan K. Allen of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Frank K. Walsh of counsel), for respondent.

JUDGES: Before: Mercure, J.P., Rose, Stein, Garry and Egan Jr., JJ. Mercure, J.P., Rose, Garry and Egan Jr., JJ., concur.

OPINION BY: Stein

OPINION

[**396] [*1500] MEMORANDUM AND JUDGMENT

Stein, J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a police officer with the City of Mount Vernon Police Department, applied for accidental disability retirement benefits after he injured his right hand and elbow during a struggle with a suspect. After a hearing, a Hearing Officer denied his application, finding that his disability was not the result of an accident pursuant to the Retirement and Social Security Law¹. Respondent adopted the Hearing Officer's findings and this *CPLR article 78* proceeding ensued.

1 Petitioner's application for performance of duty disability retirement benefits was granted.

Petitioner contends that he is entitled to accidental disability [***2] retirement benefits because his injuries were the result of an assault -- which is compensable under the Retirement and Social Security Law (*see Matter of Ammann v New York State Comptroller*, 13 AD3d 858, 858-859, 785 N.Y.S.2d 799 [2004], *lv denied* 5 NY3d 702, 833 N.E.2d 708, 800 N.Y.S.2d 373 [2005]) -- and not simply as a result of the performance of his duties as a police officer. To that end, it is petitioner's burden to demonstrate that his injuries resulted from an accident, meaning [*1501] "that they were caused by a sudden and extraordinary event that is unrelated to the ordinary risks of employment" (*Matter of Held v DiNapoli*, 82 AD3d 1444, 1445, 918 N.Y.S.2d 747 [2011] [internal quotation marks and citations omitted]). Here, the record establishes that petitioner reported to the police physician that he was injured when he tackled a suspect to the ground while attempting to place him under arrest. Because such evidence provides substantial evidence to support

respondent's finding that petitioner was injured while engaged in a risk inherent in his normal police duties, the determination will not be disturbed (*see id.*; *Matter of Welsh v New York State Comptroller*, 67 AD3d 1167, 1168, 888 N.Y.S.2d 318 [2009], *lv denied* 14 NY3d 706, 925 N.E.2d 934, 899 N.Y.S.2d 130 [2010]). The fact that the record contains [***3] proof from which it could be concluded that petitioner was injured as the result of an assault does not negate the fact that there is substantial evidence supporting the finding that petitioner's injury did not stem from a compensable accident (*see Matter of Kilbride v New York State Comptroller*, 95 AD3d 1496, 1497, 2012 N.Y. App. Div. LEXIS 3698, *2 [decided herewith]; *Matter of Wise v New York State Comptroller*,

38 AD3d 1032, 1034, 831 N.Y.S.2d 571 [2007], *lv denied* 9 NY3d 811, 876 N.E.2d 516, 844 N.Y.S.2d 787 [2007]) inasmuch [**397] as any inconsistency in the evidence presents a credibility issue for respondent to resolve (*see Matter of Welsh v New York State Comptroller*, 67 AD3d at 1169; *Matter of Hughes v Hevesi*, 56 AD3d 934, 936, 867 N.Y.S.2d 264 [2008], *lv denied* 12 NY3d 711, 909 N.E.2d 1235, 882 N.Y.S.2d 397 [2009]).

Mercure, J.P., Rose, Garry and Egan Jr., JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

Time of Request: Thursday, November 01, 2012 10:52:13 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 68

Job Number: 2827:378413328

Research Information

Service: Natural Language Search

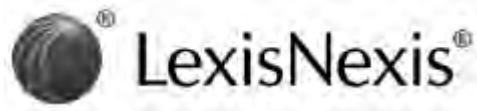
Print Request: Current Document: 23

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Physical Confrontation is "inherent" in PO duties while "restraining" a suspect

Send to: Riordan, Sean
SHERMAN FEDERMAN SAMBUR & LEVINE
8 E MAIN ST
BAY SHORE, NY 11706-8334



23 of 99 DOCUMENTS

**In the Matter of THOMAS J. REYNOLDS, Petitioner, v THOMAS P. DiNAPOLI,
as State Comptroller, Respondent.**

514139

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

**97 A.D.3d 892; 948 N.Y.S.2d 202; 2012 N.Y. App. Div. LEXIS 5279; 2012 NY Slip Op
5374**

**July 5, 2012, Decided
July 5, 2012, Entered**

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Bartlett, McDonough & Monaghan, White Plains (Benai L. Lifshitz of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Treasure of counsel), for respondent.

JUDGES: Before: Peters, P.J., Lahtinen, Malone Jr., Stein and Garry, JJ. Peters, P.J., Lahtinen, Malone Jr. and Garry, JJ., concur.

OPINION BY: Stein

OPINION

[**202] [*892] MEMORANDUM AND JUDGMENT
Stein, J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

[*893] Petitioner, a police officer, was permanently disabled as the result of injuries sustained while attempting to subdue a suspect who had been handcuffed and placed in the rear of a police car. Petitioner's application for performance of duty disability retirement benefits was approved, but his application for accidental disability retirement benefits was denied by respondent on the ground that the incident did not constitute an accident within the meaning of the Retirement and Social Security Law. Petitioner then commenced [**203] this CPLR article 78 proceeding to challenge that determination.

We confirm. [***2] To establish entitlement to accidental disability retirement benefits, a petitioner must demonstrate that the incident giving rise to the injuries was a sudden mischance unrelated to the ordinary risks of performing his or her job (*see Matter of Lenci v DiNapoli*, 92 AD3d 1078, 1078, 937 N.Y.S.2d 755 [2012]; *Matter of Rykala v New York State Comptroller*, 92 AD3d 1077, 1077-1078, 937 N.Y.S.2d 754 [2012]). This Court has repeatedly upheld respondent's denial of accidental disability retirement benefits when a law enforcement officer sustains an injury in the course of restraining a disruptive individual, as that type of physical contact is inherent in the performance of an officer's duties (*see Matter of Rykala v New York State Comptroller*, 92 AD3d at 1077-1078; *Matter of Carpiello v DiNapoli*, 88 AD3d 1045, 1046, 930 N.Y.S.2d 685 [2011]; *Matter of Welsh v New York State Comptroller*, 67 AD3d 1167, 1169, 888 N.Y.S.2d 318 [2009], *lv denied* 14 NY3d 706, 925 N.E.2d 93, 899 N.Y.S.2d 130 [2010]). Inasmuch as petitioner's own testimony indicated that he was injured in the course

of attempting to subdue an unruly suspect, we find that substantial evidence supports respondent's determination.

Peters, P.J., Lahtinen, Malone Jr. and Garry, JJ., concur.

ADJUDGED that the determination is confirmed, [***3] without costs, and petition dismissed.

Slip & Fall

Caetano v. DiNapoli – 1st issue is credited service time, the courts have consistently held that since Retirement System is the admin system charged with determining Cr. Service their determination will be upheld if “rational and supported by substantial evidence.”

Interestingly, although the court found not to be an accident, the court does give reasons why the slip and fall in this occurrence is not an accident. The court specifically points to the fact that the contemporaneous documentation does not note that there was a wet slippery spot (instead said dirty and dried stain) and she testified that her pants were not wet when she got up and she never actually saw anything leaking on the floor. --- We can use this language to our advantage when taking the testimony of officers in slip and fall cases by developing that the client subsequently saw the item that caused their fall, that they were potentially wet afterwards and that the contemporaneous documentation supports their continued story.

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 30, 2016

522238

In the Matter of SHARON A.
CAETANO,

Petitioner,

v

MEMORANDUM AND JUDGMENT

THOMAS P. DiNAPOLI, as State
Comptroller, et al.,
Respondents.

Calendar Date: May 31, 2016

Before: Lahtinen, J.P., Egan Jr., Lynch, Devine and Mulvey, JJ.

Flaherty & Shea, Buffalo (James P. Shea of counsel), for
petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E.
Storrs of counsel), for respondents.

Lahtinen, J.P.

Proceeding pursuant to CPLR article 78 (transferred to this
Court by order of the Supreme Court, entered in Albany County) to
review a determination of respondent Comptroller denying
petitioner's application for disability retirement benefits.

In September 2012, petitioner, a senior election clerk for
the Erie County Board of Elections, applied for disability
retirement benefits alleging that she was permanently
incapacitated from performing her job duties due to injuries she
suffered as the result of a fall she took at work in 2007. The
application was initially denied on the grounds that petitioner
had less than 10 years of service credit and that she had not

established that the 2007 incident constituted an accident within the meaning of the Retirement and Social Security Law. Petitioner requested a hearing and redetermination and, following a hearing, the Hearing Officer upheld the denial. Upon review, respondent Comptroller adopted the Hearing Officer's decision, and petitioner then commenced this CPLR article 78 proceeding.

We confirm. A member of respondent New York State and Local Employees' Retirement System may apply for disability retirement benefits if the member has "at least [10] years of total service credit" (Retirement and Social Security Law § 605 [b] [1]). Members with less than 10 years of total service credit may also apply for disability retirement benefits if they can show that their disability was "the natural and proximate result of an accident not caused by his [or her] own willful negligence sustained in the performance of his [or her] duties" (Retirement and Social Security Law § 605 [b] [3]; see Matter of Quevedo v Office of the N.Y. State Comptroller, 101 AD3d 1209, 1209 [2012]).

Initially, petitioner contends that the Comptroller erred in calculating her total service credit. "The Comptroller is charged with the responsibility of determining service credits for retirement purposes and his determination will be upheld if rational and supported by substantial evidence" (Matter of Cohen v New York State & Local Employees' Retirement Sys., 117 AD3d 1370, 1370 [2014] [internal quotation marks and citation omitted], lv dismissed and denied 24 NY3d 1028 [2014]; see Matter of Westmorland v New York State & Local Retirement Sys., 129 AD3d 1402, 1403 [2015]). Moreover, petitioner has the burden of establishing an entitlement to additional service credit (see Matter of Westmorland v New York State & Local Retirement Sys., 129 AD3d at 1403-1404; Matter of DeLuca v New York State & Local Employees' Retirement Sys., 48 AD3d 876, 877 [2008]).

Based upon petitioner's employment records, the Comptroller determined that she had only attained 9.95 years of total service credit. Petitioner contends that the yearly service credits in her records were inaccurate because they did not take into account time that she was out of work and being paid workers' compensation benefits in lieu of her salary. Although she based

her contention on her belief that Erie County credited her with that time for retirement purposes, the employment records do not reflect that, and she did not present any authority supporting her contention. Petitioner further relies on an October 2010 form letter from the Comptroller informing her that she had reached or was about to reach "[10] or more years of membership or credited service" (emphasis added) with the Retirement System. The letter pertains to the fact that petitioner would no longer have contributions to the Retirement System taken out of her paycheck. Inasmuch as this letter may only have acknowledged that petitioner had been a member of the Retirement System for 10 years, it is not necessarily indicative of petitioner having reached 10 years of total service credit. In light of petitioner's employment records, the Comptroller's determination that she had not attained 10 years of total service credit is rational and supported by substantial evidence and, in our view, petitioner did not satisfy her burden of establishing that she was entitled to additional service credit.

Petitioner was, therefore, required to demonstrate that her disability was the natural and proximate result of a work-related accident and the Comptroller's determination in that regard will be upheld if supported by substantial evidence (see Matter of Quevedo v Office of the N.Y. State Comptroller, 101 AD3d at 1209; Matter of Gonzalez v New York State & Local Employees' Retirement Sys., 79 AD3d 1562, 1562-1563 [2010]). For purposes of the Retirement and Social Security Law, an accident is "a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact" (Matter of Kenny v DiNapoli, 11 NY3d 873, 874 [2008] [internal quotation marks and citations omitted]; see Matter of Schoales v DiNapoli, 132 AD3d 1184, 1185 [2015]).

"[A]n injury is not accidental in nature if it occurs as the result of an applicant's routine employment duties and does not involve an unexpected event" (Matter of Cirrone v DiNapoli, 80 AD3d 1069, 1070 [2011]; see Matter of Kenny v DiNapoli, 11 NY3d at 874). Petitioner testified that, on the day of the incident, she was walking down a hallway at work when she suddenly slipped and fell. According to petitioner, she did not know what she slipped on but that the floor must have been wet from a leaking garbage bag. She acknowledged, however, that she did not observe that the floor was wet before or after she fell and her clothes

were not wet after she fell. We note that incident reports prepared by petitioner and her supervisor on the day of the incident do not reference the floor being wet, only that the floor was dirty and had a dried stain on it. In light of this evidence, the Comptroller's determination that petitioner's injuries were sustained as the result of her own misstep or inattention, and not because of an accident, is supported by substantial evidence and will not be disturbed (see Matter of Magliato v DiNapoli, 78 AD3d 1457, 1458 [2010]; Matter of Bergin v McCall, 284 AD2d 792, 792 [2001]). Petitioner's remaining claims have been considered and found to be without merit.

Egan Jr., Lynch, Devine and Mulvey, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court

Time of Request: Wednesday, October 31, 2012 12:18:06 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 81

Job Number: 1828:378230207

Research Information

Service: Natural Language Search

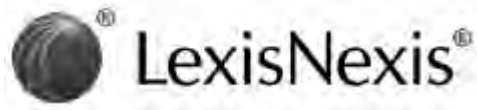
Print Request: Current Document: 9

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Petitioner failed to note in her IER that the floor was highly varnished

Send to: Riordan, Sean
SHERMAN FEDERMAN SAMBUR & LEVINE
8 E MAIN ST
BAY SHORE, NY 11706-8334



9 of 99 DOCUMENTS

**In the Matter of CAROLE A. ASSMANN, Petitioner, v THOMAS P. DiNAPOLI, as
Comptroller, Respondent.**

513158

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

**95 A.D.3d 1487; 943 N.Y.S.2d 683; 2012 N.Y. App. Div. LEXIS 3716; 2012 NY Slip Op
3701**

**May 10, 2012, Decided
May 10, 2012, EnteredNOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Law Office of Wayne J. Schaefer, Smithtown (Wayne J. Schaefer of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondent.

JUDGES: Before: Mercure, J.P., Spain, Stein, Garry and Egan Jr., JJ. Mercure, J.P., Spain, Stein and Garry, JJ., concur.

OPINION BY: Egan Jr.

OPINION

[**684] [*1487] MEMORANDUM AND JUDGMENT

Egan Jr., J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

In July 2008, petitioner, a clerk typist, was assigned to fill in for another employee, the latter of whom worked in a building adjacent to petitioner's regular work location. While delivering some paperwork during the course of her temporary assignment, petitioner slipped and fell down a set of stairs, sustaining various injuries. Petitioner's subsequent application for accidental disability retirement benefits was denied upon the ground that the incident did not constitute an accident within the meaning of the Retirement and Social Security Law. Following [*1488] a hearing and redetermination, a Hearing Officer reached [***2] a similar conclusion. Respondent thereafter adopted the Hearing Officer's decision, prompting petitioner to commence this *CPLR article 78* proceeding to challenge that determination.

We confirm. As the applicant, petitioner bore the burden of demonstrating her entitlement to accidental disability retirement benefits, and respondent's determination in this regard, if supported by substantial evidence in the record as a whole, will be upheld (see *Matter of Bleeker v New York State Comptroller*, 84 AD3d 1683, 1683, 923 N.Y.S.2d 788 [2011], lv denied 17 NY3d 709, 954 N.E.2d 1179, 930 N.Y.S.2d 553 [2011]; *Matter of Sorrentino v DiNapoli*, 74 AD3d 1694, 1695, 905 N.Y.S.2d 301 [2010]). Notably, "injuries that arise out of an employee's own misstep or inattention will not merit an accidental disability determination" (*Matter of Piccinini v DiNapoli*, 68 AD3d 1212, 1212, 889 N.Y.S.2d 730 [2009] [internal quotation marks and citation omitted]; accord *Matter of Chilelli v DiNapoli*, 91 AD3d 1098, 1098, 936 N.Y.S.2d 733 [2012]).

Although petitioner testified at the hearing that her fall was occasioned by the "highly varnished" nature of the stairs in question, the incident reports completed by petitioner and her employer shortly after petitioner's fall make no mention of this allegedly hazardous condition, [***3] and the record reflects that petitioner traversed the stairs without incident at least once before she fell. "Any

discrepancy between petitioner's hearing testimony and the written documentation regarding the condition of the stairs or the cause of petitioner's fall presented a credibility issue for the Hearing Officer to resolve" (*Matter of* [**685] *Sorrentino v DiNapoli*, 74 AD3d at 1695 [citation omitted]; see *Matter of Hardy v DiNapoli*, 82 AD3d 1490, 1491, 919 N.Y.S.2d 558 [2011]). As the record contains substantial evidence from which respondent could conclude that petitioner's fall was occasioned by her own misstep during the course of her ordinary employment duties, the underlying determination will not be disturbed (see *Matter of Hardy v DiNapoli*, 82 AD3d at 1491; *Matter of West v DiNapoli*, 79 AD3d 1565, 1566, 914 N.Y.S.2d 358 [2010]). Petitioner's remaining contentions, to the extent not specifically addressed, have been examined and found to be lacking in merit.

Mercure, J.P., Spain, Stein and Garry, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

1379RT

Time of Request: Thursday, November 01, 2012 12:22:56 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 52

Job Number: 2827:378431821

Research Information

Service: Natural Language Search

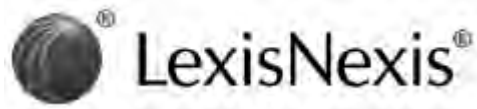
Print Request: Current Document: 57

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: System Concedes that Slip and Fall on area recently mopped is an accident

Send to: Riordan, Sean
SHERMAN FEDERMAN SAMBUR & LEVINE
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57 of 99 DOCUMENTS

[***1] In the Matter of MICHELINA MARTONE, Petitioner, v NEW YORK
STATE COMPTROLLER et al., Respondents.

513747

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT

95 A.D.3d 1554; 943 N.Y.S.2d 921; 2012 N.Y. App. Div. LEXIS 3863; 2012 NY Slip Op
3923

May 17, 2012, Decided
May 17, 2012, Entered

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [**1] Jonathan I. Edelstein, New York City, for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondents.

JUDGES: Before: Peters, P.J., Mercure, Stein, McCarthy and Garry, JJ. Peters, P.J., Mercure, Stein, McCarthy and Garry, JJ., concur.

OPINION

[*1554] MEMORANDUM AND JUDGMENT

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a school security aid, sustained injuries to her knee and neck when she slipped and fell on an area of wet floor that had recently been mopped. She thereafter applied for accidental disability retirement benefits, which were ultimately denied by respondent Comptroller. Petitioner then commenced this *CPLR article 78* proceeding to challenge that determination.

Respondents now concede that petitioner's injuries resulted from an accident and have informed this Court that they will accordingly annul the determination under review and process petitioner's application for accidental disability retirement benefits. Inasmuch as petitioner [**2] has received all the relief to which she is entitled, the petition must be dismissed as moot (*see Matter of Whipple v New York State & Local Retirement Sys.*, 91 AD3d 1017, 1017, 935 N.Y.S.2d 919 [2012]; *Matter of Stage v DiNapoli*, 86 AD3d 857, 858, 926 N.Y.S.2d 922 [2011]).

Peters, P.J., Mercure, Stein, McCarthy and Garry, JJ., concur.

ADJUDGED that the petition is dismissed, as moot, without costs.

1379RT

Time of Request: Wednesday, October 31, 2012 12:21:43 EST
Client ID/Project Name: Sean Riordan
Number of Lines: 80
Job Number: 1826:378231086

Research Information

Service: Natural Language Search
Print Request: Current Document: 11
Source: State Court Cases, Combined
Search Terms: Thomas DiNapoli

Note: Tripped over Curb in ordinary performance of duties.

Send to: Riordan, Sean
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BAY SHORE, NY 11706-8334



11 of 99 DOCUMENTS

**In the Matter of the Claim of Lena Chilelli, Petitioner, v Thomas P. DiNapoli, as
State Comptroller, Respondent.**

512776

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

**91 A.D.3d 1098; 936 N.Y.S.2d 733; 2012 N.Y. App. Div. LEXIS 158; 2012 NY Slip Op
165**

**January 12, 2012, Decided
January 12, 2012, Entered**HEADNOTES

Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement--Trip Over Curb by School Crossing Guard Did Not Constitute Accident

COUNSEL: [***1] Bartlett, McDonough & Monaghan, White Plains (Ryan K. Allen of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Julie M. Sheridan of counsel), for respondent.

JUDGES: Before: Peters, J.P., Malone Jr., Stein, Garry and Egan Jr., JJ. Peters, J.P., Malone Jr., Stein and Garry, JJ., concur.

OPINION BY: Egan Jr.

OPINION

[*1098] [**734] Egan Jr., J. Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a school crossing guard, applied for accidental disability retirement benefits after she tripped over a curb and sustained an injury to her left shoulder. Following a hearing and redetermination, petitioner's application was denied upon the ground that, among other things, petitioner did not establish that her injuries were sustained as the result of an accident within the meaning of the Retirement and Social Security Law. Respondent accepted the findings and conclusions of the Hearing Officer and denied the application, prompting petitioner to commence this *CPLR article 78* proceeding to challenge [***2] that determination.

As the applicant, petitioner bore the burden of establishing that her injury was caused by "a sudden and extraordinary event that [was] unrelated to the ordinary risks of [her] employment" (*Matter of Bleeker v New York State Comptroller*, 84 AD3d 1683, 1683-1684, 923 NYS2d 788 [2011], *lv denied* 17 NY3d 709, 954 NE2d 1179, 930 NYS2d 553 [2011] [internal quotation marks and citation omitted]; *accord Matter of O'Neill v DiNapoli*, 83 AD3d 1280, 1280, 920 NYS2d 837 [2011]), and respondent's determination in this regard will not be disturbed if it is supported by substantial evidence in the record as a whole (*see Matter of Ruggiero v DiNapoli*, 85 AD3d 1282, 1283, 924 NYS2d 221 [2011], *lv denied* 17 NY3d 711, 954 NE2d 1182, 930 NYS2d 556 [2011]; *Matter of West v DiNapoli*, 79 AD3d 1565, 1565, 914 NYS2d 358 [2010]). "[I]njuries that arise out of an employee's own misstep or inattention will not merit an accidental disability determination" (*Matter of Piccinini v DiNapoli*, 68 AD3d 1212, 1212, 889 NYS2d 730 [2009] [internal quotation marks and citation omitted]; *accord Matter of Magliato v DiNapoli*, 78 AD3d 1457, 1458, 912 NYS2d 143 [2010]), and any

inconsistencies between written documents and an applicant's sworn testimony present a credibility issue for respondent to resolve (*see Matter of Dilello v DiNapoli*, 83 AD3d 1361, 1362-1363, 921 NYS2d 709 [2011], [***3] *lv denied* 17 NY3d 717, 959 NE2d 1024, 936 NYS2d 75 [2011]; *Matter of Confreda v New York State Comptroller*, 56 AD3d 938, 940, 867 NYS2d 268 [2008], *lv denied* 12 NY3d 708, 908 NE2d 925, 881 NYS2d 17 [2009]).

Here, petitioner's application for retirement benefits, as well as the underlying incident report, indicate that her injury was [*1099] caused when she tripped over a curb during the performance of her ordinary duties, i.e., helping school children cross the street. Inasmuch as there is substantial evidence to support respondent's determination that the incident was not an accident within the meaning of the Retirement and Social Security Law, it will not be disturbed--despite evidence in the record that arguably could support a contrary conclusion (*see Matter of O'Keefe v McCall*, 287 AD2d 921, 922, 731 NYS2d 793 [2011]).

Peters, J.P., Malone Jr., Stein and Garry, JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.

Client ID/Project Name: Sean Riordan

Number of Lines: 72

Job Number: 2827:378230614

Research Information

Service: Natural Language Search

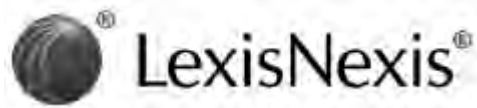
Print Request: Current Document: 10

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Fell from "off kilter" scaffold while responding to emergency - not
accident as within the scope of his duties.

Send to: Riordan, Sean
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10 of 99 DOCUMENTS

**In the Matter of Marc Lenci, Petitioner, v Thomas P. DiNapoli, as Comptroller of
the State of New York, Respondent.**

513259

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

**92 A.D.3d 1078; 937 N.Y.S.2d 755; 2012 N.Y. App. Div. LEXIS 872; 2012 NY Slip Op
895**

**February 9, 2012, Decided
February 9, 2012, Entered**HEADNOTES

Civil Service--Retirement and Pension Benefits--Police--Ordinary Disability

COUNSEL: [***1] Bartlett, McDonough & Monaghan, L.L.P., White Plains (Ryan K. Allen of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Marlene O. Tuczinski of counsel), for respondent.

JUDGES: Before: Peters, J.P., Lahtinen, Kavanagh, Stein and Garry, JJ. Peters, J.P., Lahtinen, Kavanagh and Stein, JJ., concur.

OPINION BY: Garry

OPINION

[*1078] [**756] Garry, J. Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner applied for accidental disability retirement benefits based upon several incidents that occurred throughout his tenure as a police officer. Respondent denied petitioner's application, finding that none of the incidents constituted accidents within the meaning of the Retirement and Social Security Law, and the notice requirement was not met with regard to the incident alleged to have occurred on November 16, 2000. Petitioner thereafter commenced this proceeding pursuant to *CPLR article 78*, contending that the incident occurring on November 16, 2000 does constitute an accident and that adequate [***2] notice of the incident was provided.

Petitioner bears the burden of proving that his injury was accidental, and respondent's determination will be upheld if supported by substantial evidence (*see Matter of Kempkes v DiNapoli*, 81 AD3d 1071, 1072, 916 NYS2d 338 [2011]; *Matter of Carducci v DiNapoli*, 77 AD3d 1052, 1052, 909 NYS2d 175 [2010]). An injury is accidental within the meaning of the Retirement and Social Security Law if it arises out of a "sudden, fortuitous mischance" that is unexpected and unrelated to the ordinary risks of the petitioner's job duties (*Matter of Hulse v DiNapoli*, 70 AD3d 1235, 1236, 895 NYS2d 249 [2010] [internal quotation marks and citations omitted]; *see Matter of* [*1079] *Kempkes v DiNapoli*, 81 AD3d at 1072; *Matter of Carducci v DiNapoli*, 77 AD3d at 1052-1053). Petitioner testified that while he was providing emergency assistance to a citizen who was trapped beneath concrete pieces atop a "precarious" and "off kilter" scaffolding, the scaffolding shifted, causing petitioner to injure his back. Petitioner's job duties included responding to various types of emergencies and providing assistance to citizens in need; accordingly, we find that petitioner's injury occurred while he was performing his ordinary job [***3] duties, was within the normal risks inherent in the performance of those duties,

and could have reasonably been anticipated (*see Matter of Kempkes v DiNapoli*, 81 AD3d at 1072; *Matter of Franks v New York State & Local Retirement Sys.*, 47 AD3d 1115, 1116, 849 NYS2d 714 [2008]). As respondent's denial of petitioner's application on this basis is supported by substantial evidence, we need [**757] not consider petitioner's remaining argument.

Peters, J.P., Lahtinen, Kavanagh and Stein, JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.

Client ID/Project Name: Sean Riordan

Number of Lines: 89

Job Number: 2827:378232570

Research Information

Service: Natural Language Search

Print Request: Current Document: 16

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Not acc where slip and fall on ice because of conflicting evidence on whether she was aware of ice and snow on ground

Send to: Riordan, Sean
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16 of 99 DOCUMENTS

**In the Matter of Gayle A. Hardy, Petitioner, v Thomas P. DiNapoli, as State
Comptroller, et al., Respondents.**

511013

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***82 A.D.3d 1490; 919 N.Y.S.2d 558; 2011 N.Y. App. Div. LEXIS 2080; 2011 NY Slip Op
2110***

March 24, 2011, Decided

March 24, 2011, Entered

HEADNOTES

Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement--What Constitutes Accidental Injury--Slip and Fall in Parking Lot

COUNSEL: [***1] Bartlett, McDonough, Bastone & Monaghan, L.L.P., White Plains (Sean Dooley of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Paul Groenwegen of counsel), for respondents.

JUDGES: Before: Mercure, J.P., Rose, McCarthy and Egan Jr., JJ. Mercure, J.P., Rose and McCarthy, JJ., concur.

OPINION BY: Egan Jr.

OPINION

[*1490] [**559] Egan Jr., J. Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a police detective, was injured in January 2000 when, after retrieving case notes and other paperwork from her vehicle, she slipped and fell in the parking lot at her place of employment. In November 2007, petitioner filed an application for accidental disability retirement benefits alleging that she was disabled as the result of this incident *. That application was denied upon the ground that the incident did not constitute an accident within the meaning of *Retirement and Social Security Law* § 363. Following a hearing and redetermination, a Hearing Officer reached the same conclusion. [***2] Respondent Comptroller upheld the Hearing Officer's decision, prompting petitioner to commence this *CPLR article 78* proceeding to challenge that determination.

* Petitioner also filed an application for performance of duty disability retirement benefits, which was approved.

We confirm. As the applicant, petitioner bore the burden of demonstrating her entitlement to accidental disability retirement benefits, and the Comptroller's determination will be upheld if supported by substantial evidence (*see Matter of Carducci v DiNapoli*, 77 AD3d 1052, 1052, 909 NYS2d 175 [2010]; *Matter of Stymiloski v DiNapoli*, 64 AD3d 865, 866, 881 NYS2d 677 [2009]). "The case law makes clear that an incident does not qualify as an accident justifying the award of accidental disability retirement benefits where the injury results from an expected or foreseeable event arising during the performance of routine employment duties" (*Matter of Campbell v DiNapoli*, 56 AD3d 940, 941, 867 NYS2d 560 [2008] [internal quotation marks and citations omitted]; *see Matter of Carducci v DiNapoli*, 77 AD3d at 1053), or where the employee's injuries arise out of his or her own misstep or inattention (*see Matter of Magliato v DiNapoli*, 78 AD3d 1457, 1458, 912 NYS2d 143 [2010]; *Matter of Napoli v DiNapoli*, 68 AD3d 1616, 1616, 891 NYS2d 702 [2009]).

Here, [***3] petitioner testified that, on the day in question, she traversed the area where her fall occurred four times without incident--once within 30 to 60 minutes of her fall--and that [*1491] she did not observe any ice in that area, nor did she detect anything slippery beneath her feet. Petitioner also testified, however, that there was snow on the surface of the lot where she fell, that snow had been plowed against the adjacent building and that she was parked "right next to the building." Further, a contemporaneous incident report completed [**560] by a fellow detective indicated that petitioner "slipped on the ice and snow while walking between the cars in the upper parking lot," and petitioner's own written statement, submitted four years later in the context of her performance of duty disability application, stated that she "slipped and fell on the icy pavement." The assessment of petitioner's sworn testimony, as well as the evaluation of any apparent inconsistency between such testimony and the written documentation, presented credibility issues for the Hearing Officer and, ultimately, the Comptroller to resolve (*see Matter of Confreda v New York State Comptroller*, 56 AD3d 938, 940, 867 NYS2d 268 [2008], lv [***4] *denied* 12 NY3d 708, 908 NE2d 925, 881 NYS2d 17 [2009]; *Matter of Sinclair v New York State & Local Retirement Sys.*, 42 AD3d 595, 596, 838 NYS2d 270 [2007]; *Matter of Forlano v McCall*, 304 AD2d 970, 971, 757 NYS2d 146 [2003]). As there is ample evidence upon which the Comptroller could conclude that petitioner did not sustain an accidental injury, the determination is supported by substantial evidence and will not be disturbed (*see Matter of Confreda v New York State Comptroller*, 56 AD3d at 939-940).

Mercure, J.P., Rose and McCarthy, JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.

Hazards

Time of Request: Thursday, November 01, 2012 12:20:18 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 75

Job Number: 1826:378431291

Research Information

Service: Natural Language Search

Print Request: Current Document: 51

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Court finds that hazard could be reasonably anticipated because 1) It was her job to check for hazards 2) she had worked with the blind earlier that day

Send to: Riordan, Sean
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51 of 99 DOCUMENTS

[***1] **In the Matter of ROSEANNE MARTIN, Petitioner, v KEVIN F. MURRAY,
as Deputy State Comptroller, Respondent.**

513842

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

**95 A.D.3d 1556; 943 N.Y.S.2d 805; 2012 N.Y. App. Div. LEXIS 3866; 2012 NY Slip Op
3925**

**May 17, 2012, Decided
May 17, 2012, EnteredNOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [**1] Baker, Leshko, Saline & Blosser, White Plains (Anthony C. Saline of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondent.

JUDGES: Before: Lahtinen, J.P., Spain, Malone Jr., Kavanagh and McCarthy, JJ. Lahtinen, J.P., Spain, Malone Jr. and McCarthy, JJ., concur.

OPINION BY: Kavanagh

OPINION

[*1556] MEMORANDUM AND JUDGMENT

Kavanagh, J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of the Comptroller which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a charge nurse for the Westchester Medical Center, was injured in November 2008 when, at the request of a nursing home resident, she stepped behind a chair to change the station on a radio and tripped and fell when the cord from a window blind became wrapped around her ankle. As a result of the fall, petitioner sustained injuries to her back, right arm and right shoulder which led to her application for accidental disability retirement benefits. The application was ultimately denied by the Comptroller, with a determination that the November 2008 incident did not constitute [**2] an accident within the meaning of *Retirement and Social Security Law § 63*. Petitioner thereafter commenced this *CPLR article 78* proceeding to challenge the determination, and we now confirm.

Petitioner bears the burden of establishing entitlement to accidental disability retirement [***2] benefits by demonstrating that her injuries were caused by "a sudden and extraordinary event that [was] unrelated to the ordinary risks of [her] employment" (*Matter of Chilelli v DiNapoli*, 91 AD3d 1098, 1098, 936 N.Y.S.2d 733 [2012], quoting *Matter of Bleeker v New York State Comptroller*, 84 AD3d 1683, 1683, 923 N.Y.S.2d 788 [2011], lv denied 17 N.Y.3d 709, 954 N.E.2d 1179, 930 N.Y.S.2d 553 [2011]; see *Matter of Ruggiero v DiNapoli*, 85 AD3d 1282, 1283, 924 N.Y.S.2d 221

[2011], *lv denied* 17 N.Y.3d 711, 954 N.E.2d 1182, 930 N.Y.S.2d 556 [2011]). Benefits may be denied where the hazard causing the incident was one that could have been reasonably anticipated, even though the petitioner did not actually see it until after the fall (*see Matter of Tierney v New York State Comptroller*, 90 AD3d 1215, 1215-1216, 933 N.Y.S.2d 772 [2011]; *Matter of Walsh v New York State & Local Retirement Sys.*, 82 AD3d 1341, 1341, 918 N.Y.S.2d 255 [2011]). Here, petitioner testified that, as part of her duties, she routinely checked for hazards on the floor, and if she had seen a blind cord [**3] that was too long, she would have picked it up and placed it on the window sill. In addition, petitioner testified that, although she did not notice the cord on which she tripped on the day of the accident, she had likely operated that [*1557] blind previously. Accordingly, we decline to disturb the Comptroller's finding that the hazard posed by the lengthy cord was one that could have been reasonably anticipated and, thus, we find the determination to be supported by substantial evidence (*see Matter of Batista v New York State Comptroller*, 56 AD3d 927, 928, 867 N.Y.S.2d 274 [2008], *lv denied* 12 N.Y.3d 708, 908 N.E.2d 925, 881 N.Y.S.2d 17 [2009]).

Lahtinen, J.P., Spain, Malone Jr. and McCarthy, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

Time of Request: Thursday, November 01, 2012 11:36:49 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 57

Job Number: 1828:378421446

Research Information

Service: Natural Language Search

Print Request: Current Document: 27

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Hazard that caused injury existed for long time - creating foreseeability

Send to: Riordan, Sean
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27 of 99 DOCUMENTS

**In the Matter of Paul Puccini, Petitioner, v Thomas P. DiNapoli, as Comptroller of
the State of New York, Respondent.**

512957

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***91 A.D.3d 1182; 936 N.Y.S.2d 585; 2012 N.Y. App. Div. LEXIS 285; 2012 NY Slip Op
286***

**January 19, 2012, Decided
January 19, 2012, Entered**HEADNOTES

Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement

COUNSEL: [***1] Bartlett, McDonough & Monaghan, White Plains (Lynne S. Beccaro of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Marlene O. Tuczinski of counsel), for respondent.

JUDGES: Before: Mercure, Acting P.J., Peters, Rose, Lahtinen and Garry, JJ. Mercure, A.P.J., Peters, Rose and Garry, JJ., concur.

OPINION BY: Lahtinen

OPINION

[**585] [*1182] Lahtinen, J. Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a police officer, applied for accidental disability retirement benefits based upon incidents that occurred while he was working on April 6, 2006 and October 28, 2006. Petitioner's initial application was denied and, upon a hearing and redetermination, the Hearing Officer found that petitioner failed to give timely notice of the April 6 incident and the October 28 incident did not constitute an accident within the meaning of the Retirement and Social Security Law. Respondent adopted the findings of the Hearing Officer denying petitioner's application and this *CPLR article 78* proceeding [***2] ensued.

We confirm. The internal department reports referenced by petitioner as the only proof of timely notice of the April 6, 2006 incident were not admitted into evidence at the hearing and are, therefore, not properly a part of the record herein. With regard to the October 28, 2006 incident, substantial evidence in the record supports the findings that the hazard that led to petitioner's injury existed for some time and the incident did not involve an unexpected event (*see Matter of Kenny v DiNapoli*, 11 NY3d 873, 875, 874 NYS2d 399 [2008]; *Matter of Sorrentino v DiNapoli*, 74 AD3d 1694, 1695, 905 NYS2d 301 [2010]).

Mercure, A.P.J., Peters, Rose and Garry, JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.

Time of Request: Thursday, November 01, 2012 10:40:07 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 99

Job Number: 1826:378410064

Research Information

Service: Natural Language Search

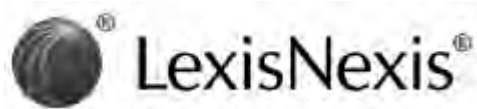
Print Request: Current Document: 14

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Although Denial, good foreseeabilty case - if the hazard was there (i.e. ajar snake holder) applicant probably would have won

Send to: Riordan, Sean
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14 of 99 DOCUMENTS

**In the Matter of DANIEL W. SULLIVAN, Petitioner, v Thomas P. DiNapoli, as
Comptroller of the State of New York, et al., Respondents.**

513967

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***95 A.D.3d 1558; 944 N.Y.S.2d 789; 2012 N.Y. App. Div. LEXIS 3855; 2012 NY Slip Op
3927***

**May 17, 2012, Decided
May 17, 2012, EnteredNOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Gross, Shuman, Brizdle & Gilfillan, P.C., Buffalo (Katherine M. Liebner of counsel), for petitioner.
Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Arnold of counsel), for respondents.

JUDGES: Before: Mercure, J.P., Rose, Stein, Garry and Egan Jr., JJ. Mercure, J.P., Rose, Stein and Egan Jr., JJ., concur.

OPINION BY: Garry

OPINION

[**790] [*1558] MEMORANDUM AND JUDGMENT

Garry, J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller which denied petitioner's application for accidental disability retirement benefits.

Petitioner worked as an investigator for the Department of Environmental Conservation for 31 years. During that time, he was involved in a lengthy undercover operation to identify individuals involved in the illegal taking, transportation and commercialization of protected wildlife. On January 6, 2008, in the course of this work, he and his partner attended a large herpetology show where they believed several targets of their investigation would be buying and selling illegal wildlife. During the show, petitioner made arrangements with two of these individuals to purchase 30 protected amphibians [***2] and seven copperhead snakes which he planned to transport in the bed of an undercover pick-up truck covered by a fiberglass cap. After the show, he and his partner met with these individuals and they delivered the reptiles in two large tupperware containers. The container holding the venomous snakes did not have a secure lid. After lowering the tailgate and opening the cap, petitioner [*1559] climbed into the bed of the truck, which was approximately 3 1/2 to 4 feet from the ground, and secured the container holding the snakes. He was anxious to exit the bed of the truck to distance himself from the snakes and to continue to obtain an audio recording of the targeted individuals on his undercover wire. Petitioner bent down to lower himself from the tailgate to the ground and, in doing so, landed hard injuring both knees. His application for accidental disability retirement benefits was initially denied, but a Hearing

Officer subsequently ruled that the January 6, 2008 incident precipitating petitioner's injury constituted an accident within the meaning of the Retirement and Social Security Law. Respondent Comptroller, however, disagreed and denied petitioner's application. This CPLR article 78 [***3] proceeding ensued.

Initially, we note that the burden is on the party seeking to obtain accidental disability retirement benefits to establish that the incident in question constituted an accident, and the Comptroller's determination in this regard will be upheld if supported by substantial evidence (*see Matter of Clarke v Murray*, 85 AD3d 1536, 1537, 926 N.Y.S.2d 717 [2011]; *Matter of Sorrentino v DiNapoli*, 74 AD3d 1694, 1695, 905 N.Y.S.2d 301 [2010]). An accident has been defined, for purposes of the Retirement and Social Security Law, as "a 'sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact'" (*Matter of Lichtenstein v Board of Trustees* [**791] of *Police Pension Fund of Police Dept. of City of N.Y., Art. II*, 57 NY2d 1010, 1012, 443 N.E.2d 946, 457 N.Y.S.2d 472 [1982], quoting *Arthur A. Johnson Corp. v Indemnity Ins. Co. of N. Am.*, 6 AD2d 97, 100, 175 N.Y.S.2d 414 [1958], *affd* 7 NY2d 222, 164 N.E.2d 704, 196 N.Y.S.2d 678 [1959]; *see Matter of Geraci v Hevesi*, 37 AD3d 941, 942, 829 N.Y.S.2d 736 [2007]). Notably, "an injury which occurs without an unexpected event as the result of activity undertaken in the performance of ordinary employment duties, considered in view of the particular employment in question, is not an accidental injury" (*Matter of Kenny v DiNapoli*, 11 NY3d 873, 874, 874 N.Y.S.2d 399 [2008], [***4] quoting *Matter of Lichtenstein v Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II*, 57 NY2d at 1012; *see Matter of Neidecker v DiNapoli*, 82 AD3d 1483, 1483-1484, 919 N.Y.S.2d 557 [2011]).

As part of his duties as an investigator, petitioner participated in surveillance activities related to undercover illegal wildlife trafficking operations for a period of three years. His involvement in transactions resulting in the sale and exchange of illegal wildlife, some of which might be venomous, was thus foreseeable. Although one might not expect venomous snakes to be transported in a nonsecure manner, there is nothing in the record to indicate that the lid of the container was ajar or that [*1560] there was another obvious hazard present that constituted a sudden, unexpected and out of the ordinary event precipitating petitioner's injury. Indeed, according to petitioner's own testimony, although he wished to distance himself from the snakes and resume audio recording of the targeted individuals, he stepped down from the tailgate in a very careful and gingerly manner when exiting the bed of the truck. Under the circumstances presented, substantial evidence supports the Comptroller's determination [***5] that the incident did not constitute an accident within the meaning of the Retirement and Social Security Law, and we find no reason to disturb his determination (*see Matter of Neidecker v DiNapoli*, 82 AD3d at 1483-1484; *Matter of O'Brien v New York State Comptroller*, 56 AD3d 937, 938, 867 N.Y.S.2d 260 [2008], *lv denied* 12 N.Y.3d 708, 908 N.E.2d 925, 881 N.Y.S.2d 17 [2009]).

Mercure, J.P., Rose, Stein and Egan Jr., JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

Job Number: 1828:378429485

Research Information

Service: Natural Language Search

Print Request: Current Document: 41

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Court found that the Uncontroverted testimony established defect in chair
caused injury - therefore Acc

Send to: Riordan, Sean
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41 of 99 DOCUMENTS

**In the Matter of Michele M. Meyer, Petitioner, v New York State Comptroller et al.,
Respondents.**

512925

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***92 A.D.3d 1122; 938 N.Y.S.2d 386; 2012 N.Y. App. Div. LEXIS 1161; 2012 NY Slip Op
1171***

**February 16, 2012, Decided
February 16, 2012, Entered**HEADNOTES

Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement--Police Officer

COUNSEL: [***1] Edelstein & Grossman, New York City (Jonathan I. Edelstein of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondents.

JUDGES: Before: Lahtinen, J.P., Spain, Stein, Garry and Egan Jr., JJ. Lahtinen, J.P., Spain, Stein and Egan Jr., JJ.,
concur.

OPINION BY: Garry

OPINION

[**386] [*1122] Garry, J. Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a police officer, applied for accidental disability retirement benefits alleging that she was injured in three workplace accidents. Petitioner's application was initially denied and she sought a hearing [**387] and redetermination. Following the hearing, the Hearing Officer denied the application, finding that none of the three incidents constituted accidents within the meaning of the Retirement and Social Security Law. Respondent Comptroller accepted the determination of the Hearing Officer, and petitioner commenced this proceeding pursuant to *CPLR article 78*.

Petitioner challenges the Comptroller's [***2] determination with regard to only two of the three claimed incidents. Pursuant to the Retirement and Social Security Law, an accident is a sudden, fortuitous mischance that is unexpected and not within the "ordinary risks of employment" (*Matter of Clarke v Murray*, 85 AD3d 1536, 1537, 926 NYS2d 717 [2011] [internal quotation marks and citation omitted]; see *Matter of Lucian v McCall*, 7 AD3d 905, 906, 776 NYS2d 637 [2004]). An injury occurring as the result of the petitioner's own misstep or inattention does not constitute an accident so as to qualify for benefits in accord with the provisions of this law [*1123] (see *Matter of Dilello v DiNapoli*, 83 AD3d 1361, 1362, 921 NYS2d 709 [2011], *lv denied* 17 NY3d 717, 959 NE2d 1024, 936 NYS2d 75 [2011]). As to the incident of October 12, 2006, petitioner testified that she was injured when she tripped over a bunched up portion of an area rug located in police headquarters. She failed to establish that the condition of this rug was not readily observable or that this incident was caused by anything other than her own lack of attention or misstep (see *Matter of Brennan v New York State & Local Empls. Retirement Sys.*, 50 AD3d 1374, 1376, 857 NYS2d 275 [2008]; *Matter of Lucian v McCall*, 7 AD3d at

906). Accordingly, we find that the Comptroller's [***3] determination relative to this incident is supported by substantial evidence, and we will not disturb it.

As to the incident of March 1, 2006, petitioner testified that while she was sitting in a wheeled office chair, the chair slipped out from beneath her when she turned to her left to reach for something in a file cabinet located behind her. Immediately after she fell, her coworkers discovered that the wheel of the chair was bent and defective, and the chair was thereafter sent for repair. The Hearing Officer made no findings relative to this uncontroverted testimony, which was sufficient to establish that the incident resulted from the defective condition of the chair, rather than petitioner's misstep (see *Matter of Balduzzi v McCall*, 220 AD2d 796, 797, 631 NYS2d 943 [1995]; compare *Matter of Clarke v Murray*, 85 AD3d at 1537; *Matter of Dilello v DiNapoli*, 83 AD3d at 1362). While respondents urge that we view the lack of any finding regarding this defect as an implicit adverse credibility determination, we are limited in our review to the grounds set forth in the determination, and may not substitute our own findings (see *Matter of Mazzotte v DiNapoli*, 70 AD3d 1233, 1234, 894 NYS2d 584 [2010]). Accordingly, we [***4] do not find the determination as to this incident supported by substantial evidence.

Lahtinen, J.P., Spain, Stein and Egan Jr., JJ., concur. Adjudged that the determination is modified, without costs, by annulling so much thereof as determined that the incident of March 1, 2006 did not constitute an accident within the meaning of the Retirement and Social Security Law; petition granted to that extent and matter remitted to respondent Comptroller for further proceedings not inconsistent with this Court's decision; and, as so modified, confirmed.

Time of Request: Wednesday, October 31, 2012 12:24:09 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 85

Job Number: 1828:378230815

Research Information

Service: Natural Language Search

Print Request: Current Document: 12

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: PO walking on plank - plank suddenly shifted - found to be acc as he had walked on it several times and had no reason to believe it would shift

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12 of 99 DOCUMENTS

**In the Matter of Robert K. O'Neill, Petitioner, v Thomas P. DiNapoli, as State
Comptroller, Respondent.**

511084

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***83 A.D.3d 1280; 920 N.Y.S.2d 837; 2011 N.Y. App. Div. LEXIS 2928; 2011 NY Slip Op
3002***

April 14, 2011, Decided

April 14, 2011, Entered

HEADNOTES

Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement--What Constitutes Accident--Slipping on Ice

Civil Service--Retirement and Pension Benefits--Accidental Disability Retirement--What Constitutes Accident--Sudden Shifting of Ramp

COUNSEL: [***1] Bartlett, McDonough, Bastone & Monaghan, L.L.P., White Plains (Benai L. Lifshitz of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondent.

JUDGES: Before: Peters, J.P., Spain, Kavanagh, Stein and McCarthy, JJ. Peters, J.P., Kavanagh, Stein and McCarthy, JJ., concur.

OPINION BY: Spain

OPINION

[*1280] [**838] Spain, J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner served as a police officer for the City of Yonkers in Westchester County and sustained injuries as the result of two job-related incidents. In February 2003, while walking through a neighborhood making sex offender notifications, he slipped on an ice patch and fell, injuring his shoulder. In March 2007, while walking down a plastic-covered cardboard ramp, he slipped and landed in an awkward position, allegedly causing the retina in his right eye to detach, leading to lost vision. Based upon these injuries, petitioner filed applications for accidental and performance of duty disability [***2] retirement benefits; only the latter was approved. Petitioner thereafter requested a hearing and redetermination with regard to his application for accidental disability benefits and, ultimately, respondent denied the application. Petitioner, thereafter, commenced this *CPLR article 78* proceeding.

In seeking accidental disability benefits, petitioner bears the burden of establishing that his injuries were the result of an accident, and respondent's determination will not be disturbed if supported by substantial evidence (*see Matter of Magliato v DiNapoli*, 78 AD3d 1457, 1458, 912 NYS2d 143 [2010]; *Matter of Stymiloski v DiNapoli*, 64 AD3d 865, 866, 881 NYS2d 677 [2009]). An accident in this context is "a sudden and extraordinary event that is unrelated to the ordinary risks of employment" (*Matter of Carducci v DiNapoli*, [*1281] 77 AD3d 1052, 1052-1053, 909 NYS2d 175 [2010] [internal quotation marks and citation omitted]; *see Matter of Magliato v DiNapoli*, 78 AD3d at 1458). Here, with regard to [**839] the February 2003 incident, petitioner testified that it was a cold day and that the sidewalk was covered with snow, including an 18-inch snow bank that petitioner stepped over just prior to his fall. Under the circumstances, respondent's determination [***3] that slipping on ice did not constitute a sudden and extraordinary event is supported by substantial evidence (*see Matter of Allesandro v DiNapoli*, 68 AD3d 1592, 1594, 892 NYS2d 602 [2009], *lv denied* 14 NY3d 705, 925 NE2d 933, 899 NYS2d 129 [2010]; *Matter of Stymiloski v DiNapoli*, 64 AD3d at 866).

However, we arrive at a different conclusion with regard to the March 2007 incident. Petitioner testified that he was carrying a box of binders and paperwork from the second floor to the first floor when the ramp he was walking down suddenly shifted, without warning, causing him to land awkwardly and jolt his neck. Further, he stated that he had made at least a dozen trips over the ramp throughout the course of the day, without any way to avoid it, and that it had been sturdy and there was no indication that it might shift. Based upon these uncontroverted facts, we find the record does not support respondent's determination that the injury was caused solely by petitioner's misstep, rather than by the sudden shifting of the ramp (*see Matter of Balduzzi v McCall*, 220 AD2d 796, 797, 631 NYS2d 943 [1995]; *compare Matter of Grutzner v Murray*, 68 AD3d 1231, 1232, 889 NYS2d 739 [2009]; *Matter of Batista v New York State Comptroller*, 56 AD3d 927, 928, 867 NYS2d 274 [2008], *lv denied* 12 NY3d 708, 908 NE2d 925, 881 NYS2d 17 [2009]).

Peters, [***4] J.P., Kavanagh, Stein and McCarthy, JJ., concur. Adjudged that the determination is annulled, without costs, and matter remitted to respondent for further proceedings not inconsistent with this Court's decision.

Medical

Time of Request: Thursday, November 01, 2012 11:44:51 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 111

Job Number: 1828:378424405

Research Information

Service: Natural Language Search

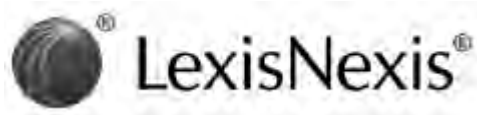
Print Request: Current Document: 33

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Court doesn't simply side with the System's Doctor and finds that System failed to properly consider Agg or Exacerbate Issue

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33 of 99 DOCUMENTS

**In the Matter of Maurice Britt, Petitioner, v Thomas P. DiNapoli, as Comptroller of
the State of New York, et al., Respondents**

512893

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***91 A.D.3d 1102; 936 N.Y.S.2d 728; 2012 N.Y. App. Div. LEXIS 164; 2012 NY Slip Op
168***

**January 12, 2012, Decided
January 12, 2012, Entered**

HEADNOTES

Administrative Law--Judicial Review--Preservation of Issue for Review

Civil Service--Retirement and Pension Benefits--Performance of Duty Disability--Preexisting Condition

COUNSEL: [***1] Gleason, Dunn, Walsh & O'Shea, Albany (Mark T. Walsh of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Arnold of counsel), for respondents.

JUDGES: Before: Spain, J.P., Malone Jr., Stein, McCarthy and Egan Jr., JJ. Spain, J.P., Malone Jr., Stein and Egan Jr., JJ., concur.

OPINION BY: McCarthy

OPINION

[*1102] [**729] McCarthy, J. Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller which denied petitioner's application for performance of duty disability retirement benefits.

Petitioner was employed as a deputy sheriff when he injured his back while apprehending a suspect in June 1999. He returned to work in 2000 and continued working until January 2005, when he was punched in the lower spine while at work. Respondent New York State and Local Employees' Retirement System denied his application for performance of duty disability retirement benefits on the ground that, although he was permanently incapacitated from performing his duties, his incapacity was not caused by workplace injuries. Petitioner requested a redetermination. Following a hearing, the Hearing [***2] Officer affirmed the denial of benefits. Respondent Comptroller upheld that determination. This proceeding ensued.

Petitioner has not preserved his due process arguments. The parties and Hearing Officer all acknowledge that the time of the second hearing was moved without informing petitioner or his counsel. The Hearing Officer and counsel for the Retirement System apparently agreed to take the direct testimony of the Retirement System's witness--a doctor who conducted an examination of petitioner and reviewed his medical records--and admit his reports, reserving to petitioner the right to object to the testimony and reports and to cross-examine the doctor at a later time. The record does not support petitioner's argument that any ex parte communication addressed matters of fact or law, as opposed to scheduling and procedure. This communication for purely administrative purposes was not improper (*see State Administrative Procedure Act* § 307 [2]; *Matter of Cantone v DiNapoli*, 83 AD3d 1259, 1260, 920 NYS2d 839 [2011]). Petitioner's counsel did not

object to the procedure relating to the doctor's testimony, either in his letter acknowledging that procedure, at the hearing scheduled for cross-examination [***3] of the doctor, or in counsel's post-hearing submission. Thus, any argument concerning this procedure is unpreserved (*see Matter of Adam v County of Onondaga*, 26 AD3d 618, 619, 810 NYS2d 232 [2006]; *Matter of Porter v McCall*, 305 AD2d 920, 922, 762 NYS2d 430 [2003]). Although there was an inordinate [*1103] delay in scheduling that may have contributed to the doctor's inability to recall many aspects of the situation, counsel adequately cross-examined the doctor and pointed out his lack of recall.

The Hearing Officer did not err in admitting the doctor's supplemental report. Even though that document was [**730] created after the initial determination was rendered, the record at these hearings is not limited to information available at the time of the initial determination; rather than a review of the initial determination, a hearing is conducted to allow the Comptroller to make a "redetermination" with "the same powers upon such hearing as upon the original application" (*Retirement and Social Security Law* § 74 [d]; *see Matter of Anderson v McCall*, 294 AD2d 740, 741, 742 NYS2d 424 [2002]).

The Comptroller's determination is not supported by substantial evidence. As the parties agree that petitioner is permanently incapacitated from performing his [***4] duties, the only issue in dispute is whether petitioner has met his burden of demonstrating that his incapacity was the natural and proximate result of his workplace injuries (*see Matter of Micalizzi v DiNapoli*, 81 AD3d 1067, 916 NYS2d 335 [2011]). Petitioner's unrefuted testimony established that he did not experience back problems prior to the June 1999 incident and, although he was able to resume full duties in 2001, he became completely unable to work after the January 2005 incident. Petitioner's chiropractor, an orthopedic surgeon who did an independent medical exam and a neurosurgeon who conducted another independent medical exam all agree that petitioner's disability was caused by the two work-related accidents. In contrast, an orthopedic surgeon who testified on behalf of the Retirement System opined that petitioner's disability stemmed from degenerative disc disease and osteoarthritis, rather than trauma. He characterized petitioner's work incidents as "temporary aggravations of a chronic underlying pre-existing condition." This medical opinion is at odds with the legal precept that "when a preexisting dormant disease is aggravated by an accident, thereby causing a disability that did not [***5] previously exist, the accident is responsible for the ensuing disability" (*Matter of Sanchez v New York State & Local Police & Fire Retirement Sys.*, 208 AD2d 1027, 1028, 617 NYS2d 238 [1994]; *see Matter of Tobin v Steisel*, 64 NY2d 254, 259, 475 NE2d 101, 485 NYS2d 730 [1985]).

Accepting the opinion of the Retirement System's doctor that petitioner suffered from degenerative disease that was aggravated by the two incidents, the record still lacks substantial evidence to support the Comptroller's finding of a lack of causation. Petitioner was out of work for over five months following [*1104] the 1999 incident, returned to work in a less demanding position for a time, then resumed his full road patrol duty and continued in that position without limitations for several years until the 2005 incident. After the 2005 incident, he never returned to work. Because petitioner was completely asymptomatic prior to the 1999 incident, that incident --which, according to the Retirement System's doctor, aggravated petitioner's dormant condition--would legally be considered a cause of his disability (*see Matter of Tobin v Steisel*, 64 NY2d at 259; *Matter of King v DiNapoli*, 75 AD3d 793, 795-796, 905 NYS2d 336 [2010]; *Matter of Sanchez v New York State & Local Police & Fire Retirement Sys.*, 208 AD2d at 1028; [***6] *Matter of Thomas v Regan*, 125 AD2d 125, 127-128, 512 NYS2d 734 [1987]). Considering that the Comptroller relied on the opinion of the Retirement System's doctor, it is unclear if the 2005 incident aggravated the injuries from the 1999 incident or petitioner's preexisting condition.

Spain, J.P., Malone Jr., Stein and Egan Jr., JJ., concur. Adjudged that the determination is annulled, without costs, petition granted and matter remitted to respondent Comptroller [**731] for further proceedings not inconsistent with this Court's decision.

Time of Request: Thursday, November 01, 2012 11:50:27 EST

Client ID/Project Name: Sean Riordan

Number of Lines: 72

Job Number: 1828:378425927

Research Information

Service: Natural Language Search

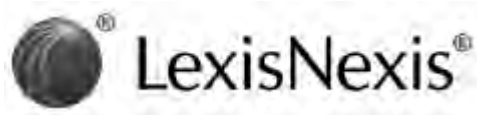
Print Request: Current Document: 34

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Here - Court finds no C/R even though Temp Agg found - but doctor noted another cause of the injury itself - another trauma

Send to: Riordan, Sean
SHERMAN FEDERMAN SAMBUR & LEVINE
8 E MAIN ST
BAY SHORE, NY 11706-8334



34 of 99 DOCUMENTS

**In the Matter of the Claim of MAUREEN J. SPACE, Petitioner, v. THOMAS
DiNAPOLI, as Comptroller of the State of New York, et al., Respondents.**

513994

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

***96 A.D.3d 1226; 947 N.Y.S.2d 632; 2012 N.Y. App. Div. LEXIS 4756; 2012 NY Slip Op
4818***

**June 14, 2012, Decided
June 14, 2012, EnteredNOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Hinman Straub, P.C., Albany (John R. Saccocio of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondents.

JUDGES: Before: Peters, P.J., Lahtinen, Spain, Kavanagh and McCarthy, JJ. Peters, P.J., Spain, Kavanagh and McCarthy, JJ., concur.

OPINION BY: Lahtinen

OPINION

[**633] [*1226] MEMORANDUM AND JUDGMENT

Lahtinen, J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller which denied petitioner's applications for performance of duty and accidental disability retirement benefits.

In 1998, while separated from her position as a police officer, petitioner was involved in a motorcycle accident fracturing her right femur and patella and requiring the insertion of a steel rod in her leg. Petitioner was reinstated to her position as a police officer in 2001 and, in 2005, applied for performance of duty and accidental disability retirement benefits based upon, as is relevant herein, an injury to her right knee sustained in a work-related February 2003 accident. Following two hearings and a recommendation by the second Hearing Officer that petitioner's applications [***2] be granted, respondent Comptroller ultimately denied the applications finding that, although petitioner was permanently incapacitated from the performance of her duties, [*1227] she failed to meet her burden of proving that such disability was due to the natural and proximate result of an accident or incident sustained in service. This *CPLR article 78* proceeding ensued.

We confirm. The Comptroller relied on the 2008 medical opinion of John Mazella, a board-certified orthopedic surgeon who twice examined petitioner on behalf of respondent New York State and Local Police and Fire Retirement System. In 2006, Mazella found, among other things, that the February 2003 accident was the competent producing cause

of petitioner's present condition, but that petitioner was not permanently disabled. In 2008, Mazella was provided with additional medical documents, including a 2007 MRI of petitioner's right knee reflecting osteoarthritis and degenerative changes, and reexamined petitioner. As a result, he revised his 2006 opinion and concluded that, while the February 2003 accident resulted in a contusion of the right knee and a temporary aggravation of her preexisting knee condition, the competent producing [***3] cause of petitioner's disabling osteoarthritic condition of the right knee resulted from the 1998 motorcycle accident, with the malrotation of her femur and obesity being significant contributory factors. Mazella's "rational and fact-based [2008] opinion founded upon a physical examination and review of the pertinent medical records" provides substantial evidence to support the Comptroller's determination (*Matter of Freund v Hevesi*, 34 A.D.3d 950, 950, 823 N.Y.S.2d 313 [2006]; see *Matter of Kossifos v DiNapoli*, 92 A.D.3d 1073, 1074, 938 N.Y.S.2d 372 [2012]; *Matter of Murray v DiNapoli*, 79 A.D.3d 1412, 1414, 912 N.Y.S.2d 809 [2010]). Petitioner's remaining contention regarding a concession made by the Retirement System at the first hearing has been reviewed and found to be without merit.

Peters, P.J., Spain, Kavanagh and McCarthy, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

Client ID/Project Name: Sean Riordan

Number of Lines: 66

Job Number: 1826:378406102

Research Information

Service: Natural Language Search

Print Request: Current Document: 7

Source: State Court Cases, Combined

Search Terms: Thomas DiNapoli

Note: Although Court upholds decision - court says "noteworthy" that the
Applicant failed to submit any statement of perm incap from his doctors

Send to: Riordan, Sean
SHERMAN FEDERMAN SAMBUR & LEVINE
8 E MAIN ST
BAY SHORE, NY 11706-8334



7 of 99 DOCUMENTS

**In the Matter of WILLIAM F. COOKE, Petitioner, v THOMAS P. DiNAPOLI,
as State Comptroller, Respondent.**

514123

**SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD
DEPARTMENT**

**96 A.D.3d 1340; 947 N.Y.S.2d 680; 2012 N.Y. App. Div. LEXIS 5171; 2012 NY Slip
Op 5234**

**June 28, 2012, Decided
June 28, 2012, Entered NOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Bartlett, McDonough & Monaghan, White Plains (Sean Dooley of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Frank K. Walsh of counsel), for respondent.

JUDGES: Before: Peters, P.J., Spain, Malone Jr., Kavanagh and Garry, JJ. Peters, P.J., Spain, Kavanagh and Garry, JJ., concur.

OPINION BY: Malone Jr.

OPINION

[*1341] [**680] MEMORANDUM AND JUDGMENT

Malone Jr., J.

Proceeding pursuant to *CPLR article 78* (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a police lieutenant, sustained an injury in August 2006 when his right knee struck a cement sidewalk while he was attempting to subdue a suspect. As a result of the injury, petitioner applied for accidental disability retirement benefits in August 2007. Following a hearing and the submission of medical documentation, respondent denied petitioner's application on the basis that he was not permanently incapacitated from performing his duties. Petitioner commenced this *CPLR article 78* proceeding, and we now confirm.

[**681] An applicant seeking accidental disability retirement benefits bears the burden of [***2] demonstrating that he or she is permanently incapacitated from performing his or her job duties (*see Matter of Capraro v DiNapoli*, 91 AD3d 1020, 1021, 936 N.Y.S.2d 372 [2012]; *Matter of Kutzma v New York State Comptroller*, 90 AD3d 1291, 1291, 935 N.Y.S.2d 667 [2011]). The resolution of conflicting medical opinions and credibility assessments are within the authority of respondent (*see Matter of Mazzei v DiNapoli*, 90 AD3d 1458, 1459, 934 N.Y.S.2d 880 [2011]; *Matter of O'Connor v DiNapoli*, 89 AD3d 1367, 1368, 936 N.Y.S.2d 332 [2011]). Here, respondent relied upon the reports of a board-certified orthopedist, who performed an independent medical examination, reviewed petitioner's records and opined that he was not permanently disabled. Notably, although petitioner submitted medical evidence that he was presently unable to perform his job duties, he submitted no definitive opinion that he was permanently incapacitated. As such, we find respondent's determination supported by substantial evidence (*see Matter of Mazzei v DiNapoli*, 90 AD3d at 1459; *Matter of O'Connor v DiNapoli*, 89 AD3d at 1368).

Peters, P.J., Spain, Kavanagh and Garry, JJ., concur.

Actual Duties Performed

Cook v. NYS Comptroller – decided 1/14/16—a Police Lt. was injured in a conceded accident. Following the accident he was placed on restricted duty status. Dr. Meyer found applicant to be able to perform sedentary work but if Petitioner was required to get in and out of vehicles and perform field work he was disabled from his duties. The Retirement System asked him to clarify his opinion further, and in response Dr. Meyer asked for more information about his required job duties which the RS did not provide to him. The court found that the question was not whether Petitioner could indefinitely perform light duties as he applied within 2 years of being assigned light duty status. Instead the proper question was whether Petitioner could perform ALL the duties required of him.

Matter of Cook v New York State Comptroller

Supreme Court of New York, Appellate Division, Third Department

January 14, 2016. Decided: January 14, 2016. Entered

520973

Reporter

135 A.D.3d 1117; 23 N.Y.S.3d 670; 2016 N.Y. App. Div. LEXIS 242; 2016 NY Slip Op 00236

In the Matter of BRENT J. COOK JR., Petitioner, v
NEW YORK STATE COMPTROLLER, Respondent.

and job requirements of such previous full duty
assignment. [2 NYCRR 364.3\[a\]](#).

Pensions & Benefits Law > Governmental Employees

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DOCUMENT IS SUBJECT TO CHANGE PENDING
RELEASE OF THE FINAL PUBLISHED VERSION.
THIS OPINION IS UNCORRECTED AND SUBJECT
TO REVISION BEFORE PUBLICATION IN THE
OFFICIAL REPORTS.

HN2 In a disability retirement case, the New York State
Comptroller is vested with the exclusive authority to
weigh conflicting medical evidence and credit the
opinion of one medical expert over another.

Pensions & Benefits Law > Governmental Employees

Core Terms

duties, disability, retirement, patrol, performing, benefits

Case Summary

Overview

HOLDINGS: [1]-Petitioner police lieutenant was eligible
for accidental disability retirement benefits under [RSSL](#)
[363](#), as the dispositive inquiry for purposes of
determining disability was not whether he was capable
of indefinitely performing the clerical tasks assigned to
him while on restricted duty but rather whether he was
capable of performing the full duties of a police
lieutenant, and the record clearly established that he
was incapable of returning to full-duty status.

Outcome

Determination annulled and matter remitted.

LexisNexis® Headnotes

Pensions & Benefits Law > Governmental Employees

HN1 Where the applicant has been assigned to light,
limited or restricted duties for less than two years prior
to the date upon which the application for disability
retirement benefits was filed, the issue of permanent
incapacity shall be determined on the basis of the duties

HN3 The dispositive inquiry for purposes of determining
disability is not whether the petitioner is capable of
indefinitely performing the tasks assigned to him while
on restricted duty but, rather, whether he is capable of
performing his full duties ([2 NYCRR 364.3\[a\]](#)).

Counsel: [***1] Leeds Brown Law, PC, Carle Place
(Rick Ostrove of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Brian
D. Ginsberg of counsel), for respondent.

Judges: Before: Lahtinen, J.P., McCarthy, Egan Jr.,
Lynch and Clark, JJ. Lahtinen, J.P., McCarthy, Lynch
and Clark, JJ., concur.

Opinion by: Egan Jr.

Opinion

[*1117] [*670] Egan Jr., J.
MEMORANDUM AND JUDGMENT

Proceeding pursuant to [CPLR article 78](#) (transferred to
this Court by order of the Supreme Court, entered in
Albany County) to review a determination of respondent
[*671] denying petitioner's application for accidental
disability retirement benefits.

Petitioner, a police lieutenant, was employed by the
Nassau County Police Department as an administrative

supervisor when, on March 26, 2010, he was injured in a motor vehicle accident while on duty. When petitioner returned to work on or about March 30, 2010, he was placed on restricted-duty status, i.e., he "was no longer allowed to perform patrol function[s]" and instead was limited to working in a clerical capacity. In February 2011, petitioner applied for accidental disability retirement benefits.

alleging that he was permanently incapacitated from the performance of his duties due to certain neck and back injuries sustained in the accident. [***2] The application was denied, and petitioner requested a hearing and redetermination¹. At the conclusion thereof, the Hearing Officer found that petitioner failed to establish that he was permanently incapacitated from the performance of his duties and upheld the denial of his application for benefits. Respondent, in turn, adopted the Hearing Officer's findings and recommendation, prompting petitioner to commence this CPLR article 78 proceeding to challenge respondent's determination.

[*1118] During the course of the administrative hearing, the parties stipulated that the March 26, 2010 incident constituted an accident within the meaning of the [Retirement and Social Security Law § 363](#); hence, the issue distilled to whether petitioner established that he was permanently incapacitated from performing his job duties (see [Matter of Anderson v DiNapoli](#), 126 AD3d 1278, 1278, 6 N.Y.S.3d 189 [2015]; [Matter of Cepeda v New York State Comptroller](#), 115 AD3d 1146, 1146, 982 N.Y.S.2d 606 [2014], lv. denied 23 N.Y.3d 906, 992 N.Y.S.2d 795, 16 N.E.3d 1275 [2014]; [Matter of Mullins v New York State Comptroller](#), 49 AD3d 951, 951-952, 853 N.Y.S.2d 216 [2008]). **HN1** Where, as here, the applicant "has been assigned to light, limited or restricted duties for less than two years prior to the date [upon which the] application for disability retirement benefits was filed with [respondent], . . . the issue of permanent incapacity [shall be determined] on the basis of the duties and job requirements [***3] of such previous full duty assignment" (2 NYCRR 364.3 [a]; see [Matter of Perez-Dunham v McCall](#), 279 AD2d 884, 885, 719 N.Y.S.2d 382 [2001]). In this regard, petitioner testified — without contradiction — that he never returned to full-duty status as a lieutenant during the less than one year that elapsed between the date of his return to work and the date upon which he applied for accidental disability retirement benefits. Petitioner

further testified, and the Chief of Patrol for the Department confirmed, that the full duties of petitioner's position entailed performing patrol functions, which included, among other things, entering and exiting a patrol vehicle, responding to an emergency, making an arrest and engaging in heavy lifting. Although numerous individuals offered various estimates as to what percentage of petitioner's actual duties were administrative versus patrol in nature, the fact remains that petitioner's full duties entailed performing patrol functions — tasks that he was not allowed to resume after he returned to work on restricted-duty status.

As for the medical evidence adduced on this issue, petitioner's treating physician indicated that petitioner remained totally disabled as of May 2011, and a follow-up report issued by that same physician in September [***4] 2011 reiterated that petitioner would be assigned to "limited/restricted duty for the long term and [was] not to [**672] return to full[] duty at any point." Jeffrey Meyer, the orthopedic surgeon who evaluated petitioner on behalf of the New York State and Local Retirement System in October 2011, initially opined, "If as [petitioner] states he is required to get in/out of a vehicle and supervise other officers on a daily basis, then he is disabled from [the] performance of all duties of a [p]olice [l]ieutenant. If, indeed, his occupation is supervisory, requiring desk work 90% of the time, then he is [*1119] not disabled." Following the hearing, the Retirement System sought clarification of Meyer's opinion, in response to which Meyer again indicated that if "repetitive field supervisory activity is required[,] including potentially lifting aided victims on a regular basis[,] then [petitioner] is, indeed, disabled." Meyer, however, reiterated that he believed that petitioner was entirely capable of "continuing sedentary work." When the Retirement System again asked Meyer to refine his position based upon petitioner's duty status as of February 2011, Meyer replied that he would need additional information before rendering [***5] an opinion. Nothing in the record reflects that such information subsequently was provided.

While it indeed is true that **HN2** "respondent is vested with the exclusive authority to weigh [conflicting medical] evidence and credit the opinion of one medical expert over another" ([Matter of Guadagnolo v DiNapoli](#), 128 AD3d 1246, 1248, 11 N.Y.S.3d 273 [2015] [internal quotation marks, brackets and citations omitted]), Meyer's opinion — in addition to arguably being contradictory — misses the mark. **HN3** The dispositive inquiry for purposes of determining disability is not whether petitioner is capable of indefinitely performing

¹Petitioner was awarded a standard service retirement in or about March 2012.

the clerical tasks assigned to him while on restricted duty but, rather, whether he is capable of performing the full duties of a police lieutenant (see [2 NYCRR 364.3\(a\)](#)). As the record as a whole clearly establishes that petitioner is incapable of returning to full-duty status, respondent's determination cannot be said to be supported by substantial evidence. Accordingly, the determination is annulled and this matter is remitted to respondent for further proceedings. In light of this

conclusion, we need not address the remaining arguments raised by petitioner.

Lahtinen, J.P., McCarthy, Lynch and Clark, JJ., concur.

ADJUDGED that the determination is annulled, with costs, [***6] petition granted and matter remitted to respondent for further proceedings not inconsistent with this Court's decision.

End of Document

Light Duty Standard

Kenig v. DiNapoli

A case concerning the light duty standard in the context of working over 100 hours of overtime.

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 19, 2016

521833

In the Matter of DANIEL G.
KOENIG,

Petitioner,

v

MEMORANDUM AND JUDGMENT

THOMAS P. DiNAPOLI, as State
Comptroller, et al.,
Respondents.

Calendar Date: April 20, 2016

Before: Lahtinen, J.P., McCarthy, Devine, Clark and Mulvey, JJ.

Davis & Ferber, LLP, Islandia (Christopher S. Rothemich of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Arnold of counsel), for respondents.

McCarthy, J.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller denying petitioner's application for accidental disability retirement benefits.

In July 2007, petitioner, a police officer, was injured when a bullet fragment from another police officer's gunshot ricocheted off a target at the firing range and struck petitioner in the leg. Upon his return to work in December 2007, petitioner was placed on light duty assignment. In January 2009, petitioner filed an application for accidental disability retirement

benefits. Following the commencement of a hearing, respondent New York State and Local Police and Fire Retirement System moved to assess petitioner's disability application on whether he was incapacitated from the performance of the duties assigned to light duty work in accordance with 2 NYCRR 364.3 (c) inasmuch as petitioner worked 100 or more hours of paid overtime within a 12-month period while working in a light duty capacity in the 12 months prior to filing the application for accidental disability retirement benefits. Petitioner objected, noting that the hearing had already been commenced under the full duty performance standard and also contesting the 100 hours of overtime worked. Respondent Comptroller, accepting the findings and conclusions of the Hearing Officer, found that whether petitioner was permanently disabled from the performance of his duties should be evaluated on the basis of his light duty assignment and thereafter denied his application for accidental disability retirement benefits. This CPLR article 78 proceeding ensued.

Petitioner's contention that it was error, following the commencement of the hearing, to change the standard upon which to evaluate his disability retirement application from full duty to light duty performance, particularly given that he already had presented medical testimony based upon his full duty assignment, is without merit. Here, evidence in the record established that petitioner continuously performed light duty assignment for a year following his return to work and also performed at least 100 hours of paid overtime during a 12-month period prior to filing his application for disability retirement benefits in accordance with 2 NYCRR 364.3 (c), which therefore requires that the determination on the issue of permanent incapacity be evaluated on the basis of the light duty assignment. Although petitioner sought to deduct mandatory overtime for medical evaluations or court appearances and contractual travel overtime from petitioner's total hours of overtime,¹ we find nothing irrational, unreasonable, arbitrary or capricious in the

¹ Notably, even under his own assessment, petitioner completed more than 90 hours of voluntary overtime during the relevant 12-month period.

Comptroller's interpretation that, under the circumstances herein, such overtime was reasonably anticipated by the regulation and should not be excluded from the total overtime hours reported (see generally Matter of Cook v DiNapoli, 113 AD3d 949, 950 [2014]; Matter of Nigro v McCall, 218 AD2d 846, 848 [1995]; Matter of Natoli v Regan, 196 AD2d 945, 946 [1993]). In any event, "[t]he Comptroller is vested with . . . the duty to correct errors and cannot be estopped to create rights to retirement benefits to which there is no entitlement" (Matter of Bombace v Nitido, 117 AD3d 1375, 1376 [2014] [internal quotation marks and citations omitted]; see Matter of Galanthay v New York State Teachers' Retirement Sys., 50 NY2d 984, 986 [1980]; Matter of Kempkes v DiNapoli, 111 AD3d 1009, 1010 [2013]). Notably, no prejudice to petitioner resulted as he was afforded the opportunities to recall or have his medical expert submit an affidavit regarding petitioner's ability to perform light duty work and also was informed that appropriate time would be given in order for him to present any additional evidence or witnesses – opportunities of which petitioner declined to avail himself (see Matter of Perez-Dunham v McCall, 279 AD2d 884, 885 [2001]). Given that petitioner presented no evidence regarding his inability to perform light duty work, the Comptroller's denial of petitioner's application for accidental disability retirement benefits will not be disturbed. Petitioner's remaining contentions have been reviewed and found to be without merit.

Lahtinen, J.P., Devine, Clark and Mulvey, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style. The first name "Robert" is written in a larger, more prominent script, and "D. Mayberger" follows in a similar but slightly smaller script.

Robert D. Mayberger
Clerk of the Court

Unrepresented Claimants

Begley v DiNapoli

Slip and Fall case of an unrepresented claimant. Court found that the Hearing Officer does not have a duty to help an unrepresented claimant develop evidence to prove his/her disability.

Matter of Begley v. DiNapoli

Supreme Court of New York, Appellate Division, Third Department

October 8, 2015, Decided; October 8, 2015, Filed

520374

Reporter

2015 N.Y. App. Div. LEXIS 7267; 2015 NY Slip Op 07323

[1]** In the Matter of JAMES C. BEGLEY, Petitioner, v THOMAS P. DINAPOLI, as New York State Comptroller, et al., Respondents.

Notice: THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Core Terms

benefits, parking lot, enhanced, disability retirement benefits, exited, ice storm, foreseeable, conditions, arrived, confirm, morning, slipped

Counsel: **[*1]** Kevin P. Sheerin, Mineola, for petitioner.

Eric T. Schneiderman, Attorney General, Albany (William E. Storrs of counsel), for respondents.

Judges: Before: Peters, P.J., McCarthy, Garry and Rose, JJ. Peters, P.J., McCarthy and Rose, JJ., concur.

Opinion by: Garry

Opinion

MEMORANDUM AND JUDGMENT

Proceeding pursuant to [CPLR article 78](#) (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of respondent Comptroller denying petitioner's application for enhanced disability retirement benefits.

Petitioner worked as an ordinance enforcement officer with the Department of Public Safety for the Town of Huntington in Suffolk County. On the morning of February 2, 2011, after arriving at the parking lot at work, he exited his vehicle and slipped on ice causing him to sustain injuries to his legs, knees and back. As a result of this incident, petitioner applied for disability retirement benefits under Retirement and Social

Security Law article 15. As part of his application, he sought enhanced benefits on the basis that the incident constituted an accident within the meaning of [Retirement and Social Security Law § 605](#) **[**2]** ¹. His application for enhanced benefits was denied and he requested a hearing **[*2]** ². Petitioner elected to proceed pro se at the hearing and, at its conclusion, the Hearing Officer upheld the denial. Thereafter, respondent Comptroller issued a determination agreeing with the result reached by the Hearing Officer and finding that petitioner had "failed to meet his burden of proof that his injury resulted from an accident sustained in service." This [CPLR article 78](#) proceeding ensued.

We confirm. As defined for purposes of the Retirement and Social Security Law, an unexpected and unfortunate incident does not constitute an accident, so as to support an award of benefits, "where the injury results from an expected or foreseeable event arising during the performance of routine employment duties" ([Matter of Lundquist v DiNapoli](#), 106 AD3d 1439, 1439, 967 N.Y.S.2d 154 [2013], quoting [Matter of O'Brien v Hevesi](#), 12 AD3d 895, 896, 784 N.Y.S.2d 701 [2004], lv dismissed 5 NY3d 749, 834 N.E.2d 778, 800 N.Y.S.2d 867 [2005]; see [Matter of Scofield v DiNapoli](#), 125 AD3d 1086, 1086, 3 N.Y.S.3d 452 [2015]). Significantly, the burden is on the party seeking benefits to establish that the incident causing his or her injury was an accident

¹ Such benefits are authorized by 2 NYCRR part 368 and the Older Workers' Benefit Protection Act (see [29 USC §§ 621-634](#) [1990], [Pub L 101-433](#), 104 U.S. Stat 978).

² That part of petitioner's application seeking ordinary disability retirement benefits was granted.

(see [Matter of Lundquist v DiNapoli](#), 106 AD3d at 1439; [Matter of Smith v New York State & Local Retirement Sys.](#), 103 AD3d 966, 966-967, 959 N.Y.S.2d 762 [2013]).

Here, petitioner testified that the night before the incident there was an ice storm, and he left [*3] for work early the following morning to allow him time to navigate the icy road conditions. He stated that he spoke to his supervisor while en route and arrived in the parking lot about 10 minutes prior to his regularly scheduled shift. As he exited his vehicle, he took a few steps and then slipped and fell in the parking lot. While he was on the ground, he saw that he was lying on ice, and water was running down the middle. Based upon petitioner's testimony describing the occurrence and his awareness of the hazardous conditions created by the ice storm, he should have reasonably anticipated that the parking lot would be slippery when he exited his vehicle. Accordingly, as the precipitating event was entirely foreseeable, substantial evidence supports the Comptroller's finding that the incident did not constitute an accident within the meaning of the Retirement and Social Security Law and, thus, that petitioner was not entitled to enhanced benefits (see e.g. [Matter of Diciocio v DiNapoli](#), 124 AD3d 1170, 1171, 3 N.Y.S.3d 162

[2015]; [Matter of Lundquist v DiNapoli](#), 106 AD3d at 1439-1440 [2013]; [Matter of Messina v New York State & Local Employees' Retirement Sys.](#), 102 AD3d 1068, 1068-1069, 959 N.Y.S.2d 289 [2013], lv denied 21 NY3d 855, 989 N.E.2d 970, 967 N.Y.S.2d 688 [2013]; [Matter of Ruggiero v DiNapoli](#), 85 AD3d 1282, 1283, 924 N.Y.S.2d 221 [2011], lv denied 17 NY3d 711, 954 N.E.2d 1182, 930 N.Y.S.2d 556 [2011]).

Petitioner's claim that he was disadvantaged by the absence of counsel is unavailing. The Hearing Officer provided him with an opportunity to secure representation, but he declined to do so despite [*4] knowing the potentially adverse consequences (see generally [Matter of Slayton v New York State & Local Retirement Sys.](#), 288 AD2d 509, 509-510, 731 N.Y.S.2d 823 [2001]). Likewise, contrary to petitioner's claim, the Hearing Officer bore no responsibility to develop the record on petitioner's behalf.

Peters, P.J., McCarthy and Rose, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.



PUBLIC SAFETY OFFICER'S BENEFITS PROGRAM

- FACT SHEET
- CHECKLIST: FILING A PSOB
DEATH CLAIM
- CHECKLIST: FILING A PSOB
DISABILITY CLAIM
- EDUCATION ASSISTANCE
PROGRAM



BJA Fact Sheet

FS 000359 • REVISED JULY 2015

BUREAU OF JUSTICE ASSISTANCE • OFFICE OF JUSTICE PROGRAMS

DENISE E. O'DONNELL, DIRECTOR

Public Safety Officers' Benefits Program

Enacted in 1976, the Public Safety Officers' Benefits (PSOB) Program:

- Assists in the recruitment and retention of qualified public safety officers.
- Establishes the value communities place on contributions from those who are willing to serve their communities in dangerous circumstances.
- Offers peace of mind to men and women who are seeking careers in public safety.

A unique effort of the U.S. Department of Justice; local, state, and federal public safety agencies; and national organizations, the PSOB Program provides death and education benefits to survivors of fallen law enforcement officers, firefighters, and other first responders, as well as disability benefits to officers catastrophically injured in the line of duty.

The PSOB Office is responsible for reviewing nearly 900 death, disability, and education claims submitted annually. The PSOB Office also collaborates with national firefighter, law enforcement, and first responder groups to provide a wide range of PSOB training and technical assistance resources, through conferences, seminars, and printed materials such as the *PSOB Information Kit*, to offer vital information and support to survivors and agencies of America's fallen public safety officers.

PSOB Benefits

Death

PSOB provides a one-time benefit to eligible survivors of public safety officers whose deaths were the direct and proximate result of an injury sustained in the line of duty on or after September 29, 1976. For the current death benefit amount, visit the PSOB web site at www.psob.gov.

Disability

PSOB provides a one-time benefit to eligible public safety officers who were permanently and totally disabled as a result of a catastrophic injury sustained in the line of duty on or after November 29, 1990. Injuries must permanently prevent officers from performing any gainful work in the future. For the current disability benefit amount, visit www.psob.gov.

Education

PSOB provides support for higher education to eligible spouses and children of public safety officers who died in the line of duty or were catastrophically disabled in the line of duty. For current details regarding educational assistance, visit www.psob.gov.

MESSAGE FROM THE DIRECTOR

Across the country, dedicated public safety officers watch over our neighborhoods and work to make our communities safer. As Director, I respect these officers' devotion and their willingness to place themselves in danger to protect our nation's citizens. We owe officers—and their families—a tremendous debt of gratitude. And when tragedy strikes, our focus must be on helping the survivors and the public safety agencies.

To that end, the Bureau of Justice Assistance (BJA) and the Office of Justice Programs (OJP) are moving forward with enhancements to the Public Safety Officers' Benefits Office and Program to better serve our public safety officers, their families, and their agencies. In just the past several months, key steps have been taken to ensure that the PSOB Program has sufficient resources so that survivors will receive the highest quality service

continued on p. 2

KEY POINTS

- The Public Safety Officers' Benefits (PSOB) Program serves the broader public safety community—law enforcement, firefighter, and other first responder survivors and disabled public safety officers.
- PSOB provides no-cost support to public safety agencies including training and technical assistance in responding to line-of-duty deaths.

continued on p. 2

MESSAGE (cont.)

available and the PSOB Office staff can work efficiently and effectively to provide grieving families with the benefits they so greatly deserve and coworkers with caring and helpful assistance when filing claims on behalf of their fallen colleagues.

Without question, **“PSOB Cares,”** and BJA and OJP remain committed to providing survivors and law enforcement, firefighter, and other first responder agencies with the information and support needed throughout the claim process.

KEY POINTS (cont.)

- PSOB is implemented by the U.S. Department of Justice’s Bureau of Justice Assistance, an agency dedicated to supporting state and local public safety agency needs and committed to serving these agencies and their families, while respecting and honoring their sacrifices.
- Tools and checklists are available to assist agencies and survivors with required documents and ensuring timely claim review and decision.
- The Hometown Heroes Survivors Benefit Act, and later the Dale Long PSOB Improvements Act of 2012, expanded program coverage to include certain heart attacks, strokes, and vascular ruptures.

For more information, visit www.psob.gov.

CONTACT US

Public Safety Officers’ Benefits Office
Bureau of Justice Assistance
Office of Justice Programs
810 Seventh Street NW
Fourth Floor
Washington, DC 20531
Phone: 202-307-0635
Toll-free: 1-888-744-6513
E-mail: AskPSOB@usdoj.gov
PSOB web site: www.psob.gov



Required Documents for Filing a PSOB Death Claim

- PSOB Report of Public Safety Officer’s Death form completed and signed by the head of the public safety agency or designee.
- Detailed Statement of Circumstances from the initiation of the incident to the pronouncement of the officer’s death.
- Investigation, Incident, and Accident Reports, if any.
- Death Certificate.
- Autopsy, Toxicology Report, or a statement signed by the head of the public safety agency or designee explaining that none were performed.
- PSOB Claim for Death Benefits form completed and signed by the survivor/claimant.
- Officer’s current Marriage Certificate, *if applicable*.
- Divorce Decrees for the officer’s and current spouse’s previous marriages, including references to physical custody of any children, *if applicable*.
- Death Certificates for the officer’s and current spouse’s previous spouses, if any of the marriages ended in death, *if applicable*.
- Birth Certificates for all the officer’s surviving children and step-children, regardless of age or dependency, identifying the children’s parents, *if applicable*. For further details on this requirement, please go to www.psob.gov.

Required Documents for Filing a PSOB Disability Claim

- PSOB Report of Public Safety Officer’s Permanent and Total Disability Claim form completed and signed by the head of the public safety agency or designee, and the disabled officer.
- Benefits Provider Information stating the disabled officer has received the maximum allowable disability compensation for public safety officers in the agency.
- Circumstances of Injuries that includes the officer’s name and title, when and where the incidents occurred, what initiated them, and the nature of the injuries.
- Agency Investigation, Accident, Collision, Reconstructive Reports, if any.
- Toxicology Report, or a statement signed by the head of the public safety agency or designee explaining that no toxicology was performed.
- Tax Returns for each state, local, and federal tax return filed by or on behalf of the officer from the year before the injury to the current year.
- Medical Documentation including admission, discharge, and treatment summaries, as well as a final diagnosis.
- Claimant Statement signed by the disabled officer or representative regarding the educational level of the officer, vocational or functional capacity assessments, and whether the officer has worked at any job since the disabling injury.

Required Documents for Filing a PSOB Education Claim

Visit the online site for the PSOB Educational Assistance Program at:
https://www.psob.gov/pdfs/en/PSOB_Ed_Full_Form.pdf.

Please do not hesitate to call the PSOB Office toll free at 1-888-744-6513 for assistance with any part of the PSOB claim.

PUBLIC SAFETY OFFICERS' BENEFITS DISABILITY BENEFITS PROGRAM



Checklist

FILING A PSOB DISABILITY CLAIM

U.S. Department of Justice



The Public Safety Officers' Benefits (PSOB) Office extends its condolences to you on the loss of your colleague. This checklist is designed to streamline the PSOB filing and review process for the fallen officer's survivors and you. Do not hesitate to contact the PSOB Office toll free at 1-888-744-6513 for assistance with any part of the PSOB claim.

— STEP 1 —

Collect the following information regarding the officer's line-of-duty death from your agency records.

- ☐ PSOB Report of Public Safety Officer's Death form, completed and signed by the head of the public safety agency. The form is available at www.ojp.usdoj.gov/BIA/grant/psob/death_claim.pdf.
- ☐ Detailed Statement of Circumstances from the initiation of the incident to the officer's death, on agency letterhead and signed by department head or designee.
- ☐ Investigation, Incident, and/or Accident Reports.
- ☐ Death Certificate.
- ☐ Autopsy Report, or a statement signed by the head of the public safety agency or the medical examiner noting that no autopsy was performed.
- ☐ Toxicology Report, or a statement signed by the head of the public safety agency or the medical examiner noting that no analysis was performed.
- ☐ When the cause of death is a heart attack or stroke: Refer to the [Hometown Heroes Checklist](http://www.psob.gov/HometownHeroesChecklist) available at www.psob.gov.
 - ☐ A statement, on agency letterhead and signed by the agency head or designee, accounting for the 24-hour period prior to the onset of the officer's heart attack or stroke, noting the hours within this period that the officer was on duty, and all on-duty actions during that time.
 - ☐ All investigation, incident, and/or accident reports for the officer's on-duty activities in the 24 hours prior to his or her heart attack or stroke.
- ☐ Medical documents about any response to the heart attack or stroke (like an ambulance run sheet) and any treatment of the officer prior to his or her death.
- ☐ **VOLUNTEER FIREFIGHTERS (VFD) ONLY:** Supporting documentation of department's volunteer status, *if applicable*.
 - ☐ If VFD is a nonprofit/chartered corporation:
 1. A statement on letterhead, signed by an elected official such as a mayor, county commissioner, etc., . . . and notarized, which states:

"The [insert name of VFD] is legally organized and is authorized by the [insert name of government agency] to act on its behalf by providing fire services, as its primary function, to the community of [insert name of jurisdiction]."
 2. A certified copy of the charter or minutes of the government agency's meeting establishing the VFD as that government agency's VFD.
 - ☐ If VFD is a unit of government that utilizes volunteers:
 1. A statement on letterhead, signed by an elected official and notarized, which states:

"The [insert name of VFD] is a unit of [insert level of government] government using volunteer firefighters."

— STEP 2 —

Collect the following information regarding the officer's surviving family and potential beneficiaries.

For officers with surviving children, use the "Children At-A-Glance" chart on the back of this checklist for the documents to include with the claim packet.

- ☐ *PSOB Claim for Death Benefits* form, completed and signed by the survivor or claimant.
- ☐ Officer's current marriage certificate, *if applicable*.
- ☐ Divorce decrees for all the officer's and current spouse's previous marriages, including references to physical custody of any children, *if applicable*.
- ☐ Death certificates for all the officer's and current spouse's previous marriages, if any of the marriages ended in death, *if applicable*.

— STEP 3 —

Submit the above information to the PSOB Office, keeping a complete copy for your records.

- ☐ **Mailing Address:**
Public Safety Officers' Benefits Office
Bureau of Justice Assistance
Office of Justice Programs
810 Seventh Street NW.
Fourth Floor
Washington, DC 20531
- ☐ **E-mail:** AskPSOB@usdoj.gov
- ☐ **Fax:** 202-616-0314

SHOULD TRAGEDY STRIKE

- ☐ Contact the PSOB Office at 1-888-744-6513. The PSOB Call Center is open Monday through Friday from 7:00 a.m. to 7:00 p.m.
- ☐ Download death claim forms at www.psob.gov.
- ☐ When in doubt regarding the eligibility of a claim, always contact the PSOB Office to discuss.

Because every PSOB case is unique, additional information may be requested by the PSOB Office to help clarify or establish the eligibility of claims and beneficiaries according to the PSOB Act and its regulations.

PUBLIC SAFETY OFFICERS' BENEFITS "CHILDREN" AT-A-GLANCE

	Birth Certificate	Signature on PSOB Claim Form	Statement from child that he/she was capable of self-support when the officer passed away	Statement from school confirming child's status as a full-time student for the term when the officer passed away	Statement from child's parent that, when the officer passed away: <ul style="list-style-type: none"> the child's principal residence was the home of the officer, OR the child did not live at the officer's home but was dependent on the officer's income for more than one-half of the child's support, OR the officer accepted the child as his/her own (include affidavits from two non-family members stating that).
Natural child, age 18 or under when the officer passed away?	✓	Parent or Guardian of Child			
Stepchild, age 18 or under when the officer passed away?	✓	Parent or Guardian of Child			✓
Natural child, age 19–22, and a full-time student when the officer passed away?	✓	Child		✓	
Natural child, age 19–22, and not a full-time student when the officer passed away?	✓	Not Required	✓		
Stepchild, age 19–22, and a full-time student when the officer passed away?	✓	Child		✓	✓
Stepchild, age 19–22, and not a full-time student when the officer passed away?	✓	Not Required	✓		
Natural or stepchild over the age of 22 when the officer passed away?	✓	Not Required			

While the PSOB Office hopes that no agency ever requires our services, we stand ready to assist you throughout the claim process. Thank you for your own public safety efforts that serve to keep America safe.



BJA

Bureau of Justice Assistance
U.S. Department of Justice

PUBLIC SAFETY OFFICERS' BENEFITS OFFICE
 U.S. Department of Justice • Office of Justice Programs • Bureau of Justice Assistance
 810 Seventh Street NW., Fourth Floor, Washington, DC 20531
 Web site: www.psob.gov • Toll free: 1-888-744-6513 • E-mail: AskPSOB@usdoj.gov



IMPORTANT: In general, Public Safety Officers' Benefits (PSOB) claims must be filed within 3 years of the public safety officer's disability. To discuss claims that fall outside of this filing period, please call the PSOB Office directly at 1-888-744-6513.

Medically retired officers, or their representatives, and their former employing public safety agency must submit the following documents concerning the line-of-duty injury to file a disability claim with the PSOB Office:

- ☐ **Report of Public Safety Officer's Permanent and Total Disability Claim Form:** This form must be completed and signed by the disabled officer (or representative) and the head of your former employing agency.
- ☐ **Benefits Provider Information:** A letter or affidavit from the agency's benefits provider stating the disabled officer is receiving the maximum allowable disability compensation for public safety officers in the agency. This must be on the provider's letterhead and signed by an authorized official. The benefits provider may be a retirement fund or a government workers' compensation office. Please note that, for purposes of the PSOB Disability Program, Social Security does not qualify as a benefits provider, even though the officer may be receiving funds from that source.
- ☐ **Circumstances of Injuries:** A statement signed by the head of the former employing agency, on agency letterhead, that includes the officer's name and title, when and where the incidents occurred, what initiated them, and the nature of the injuries. This statement must also indicate the date on which the officer was medically retired from the agency.
- ☐ **Agency Investigation (Accident/Collision/Reconstructive) Reports:** These reports should contain information relevant to each incident and injury that contributed to the officer's permanent and total disability. If these reports are unavailable, a statement to that effect must be signed and submitted by the head of the former employing agency.
- ☐ **Official Toxicology Catastrophic Reports:** If available, these reports must be signed by the official who performed the toxicology analysis immediately following each injury. If a toxicology analysis is not available, a statement to that effect must be signed and submitted by the head of the former employing agency.
- ☐ **Tax Returns:** A copy of each state, local, and federal tax return filed by or on behalf of the public safety officer from the year before the injury to the current year.
- ☐ **Medical Documentation:** Medical documentation must include admission and discharge summaries from each medical facility in which the officer was treated for each of the injuries, as well as a final medical diagnosis.
- ☐ **Claimant Statement:** A brief statement signed by the disabled officer or representative must also be submitted, that addresses the following questions:
 1. What is the highest educational level the disabled officer achieved? Has the disabled officer completed any special training or courses, including military training?
 2. Has the disabled officer received any formal vocational evaluations or vocational rehabilitative treatment? If so, what is their current status?
 3. Has the disabled officer worked at any job following the injuries? If so, where?



PUBLIC SAFETY OFFICERS' BENEFITS OFFICE

U.S. Department of Justice • Office of Justice Programs • Bureau of Justice Assistance
810 Seventh Street NW., Fourth Floor, Washington, DC 20531
Web site: www.psob.gov • Toll free: 1-888-744-6513 • E-mail: AskPSOB@usdoj.gov



PUBLIC SAFETY OFFICERS' BENEFITS



EDUCATIONAL ASSISTANCE PROGRAM



U.S. Department of Justice



The Federal Law Enforcement Dependents Assistance (FLEDA) Act was enacted in October 1996 to enhance the appeal of service in civilian federal law enforcement agencies by providing financial assistance for higher education to spouses and children of federal law enforcement officers killed in the line of duty. Congress and the President amended the Act in 1998 to provide educational assistance to spouses and children of police, fire, and emergency public safety officers killed in the line of duty, thus creating the Public Safety Officers' Educational Assistance (PSOEA) Program. The PSOEA Program also makes assistance available to eligible spouses and children of public safety officers permanently and totally disabled by catastrophic injuries sustained in the line of duty.

Background

By amending the FLEDA Act, Congress and the President extended educational assistance to include not only the families of federal law enforcement officers but all public safety officers. In so doing, they made an important statement about how vital our public safety officers are to our nation's safety.

The PSOEA Program recognizes that the benefits available to these families through the Public Safety Officers' Benefits (PSOB) Program, administered by the Bureau of Justice Assistance, U.S. Department of Justice, are often consumed by basic needs and are not sufficient to support the costs of higher education. For many families, however, access to higher education is instrumental in their ability to move forward in the aftermath of a line-of-duty tragedy.

PSOEA Program Benefits

The PSOEA Program provides an educational assistance allowance to eligible survivors of public safety officers whose deaths or permanent and total disabilities are the direct and proximate result of a traumatic injury sustained in the line of duty.

PSOEA benefits may be used solely to defray educational expenses, including tuition, room and board, books, supplies, and education-related fees. The amount of assistance is determined by whether the student

attended school as a full-time, three-quarter-time, half-time, or less-than-half-time student. Also, the amount of assistance is subject to change consistent with the current computation of the educational assistance allowance set forth in Title IV of the Higher Education Act, Section 3532 of Title 38, United States Code.

PSOEA Program Effective Dates

Under the PSOEA Program, the families of federal, state, and local police, fire, and emergency public safety officers are covered for line-of-duty deaths that occurred on or after January 1, 1978. The effective date for families of permanently and totally disabled federal law enforcement officers is October 3, 1996. Families of state and local police, fire, and emergency public safety officers are covered for line-of-duty permanent and totally disabling injuries that occurred on or after November 13, 1998. Families of Federal Emergency Management Agency (FEMA) personnel and state, local, and tribal emergency management and civil defense agency employees are covered for such injuries sustained on or after October 30, 2000.

Eligibility for PSOEA Benefits

The PSOEA Program stipulates that PSOEA benefits are to be provided directly to dependents who attend a program of education at an eligible educational institution and are the spouses or children of federal, police, fire, and emergency public safety officers whose deaths or permanent and total disabilities are covered by the PSOB Program (42 U.S.C. 3796 et seq.). Public safety officers' children are no longer eligible for assistance, however, after their 27th birthday, absent a finding by the Attorney General of extraordinary circumstances. Assistance under the PSOEA Program is available for 45 months of full-time education or training or for a proportional period of time for a part-time program.

For Further Information

For more information about the PSOEA Program, to obtain a copy of the PSOEA regulations and application form, or to share your observations and recommendations, please contact the PSOB Office.



PUBLIC SAFETY OFFICERS' BENEFITS OFFICE

U.S. Department of Justice • Office of Justice Programs • Bureau of Justice Assistance
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WTC-12

- Background and deadline extension
- Notice of participation form
- Filing WTC-Related Workers' Compensation Claims
- MTA PBA 20 Year Police Benefit Pension Plan
- WTC Clean up & Recovery Presumption letter-July 2015

Filing WTC-Related Workers' Compensation Claims: A Step-By-Step Guide for City Employees Who Participated In WTC Rescue and Recovery Operations

The information below is provided to give City employees a basic understanding of how WTC-related Workers' Comp claims are handled by the NYC Law Department and the NY State Workers' Compensation Board. It is not exhaustive; City employees who file claims also should visit the NY State Workers Compensation Board website at www.wcb.state.ny.us for more comprehensive information.

Ways to Speed the Processing of Your Workers' Compensation Claim:

- File your claim directly with the New York City agency for which you worked during WTC rescue and recovery operations rather than with the NY State Workers' Compensation Board.
- Submit detailed medical evidence and any other information requested by the Board in a timely manner. If possible, submit medical evidence when you submit your claim.
- Appear for any independent medical exams required by the City on the dates scheduled.
- Attend any hearings scheduled at the Workers' Compensation Board.

Step #1

Register with the NY State Workers' Compensation Board using a WTC-12 form by September 11, 2014. This will preserve your right to file a WTC-related claim in the future even if you are not experiencing any health problems related to your rescue and recovery work at present.

Please Note: Submitting a WTC-12 form prior to September 11, 2014 is NOT the same as filing a WTC-related Workers' Comp claim. These are two different steps. To find out if you already have submitted a WTC-12 form, please call 877-632-4996 or visit www.wcb.state.ny.us.

Step #2

If you believe that you now are experiencing disabling health problems related to your participation in WTC rescue and recovery operations, file a Workers' Comp claim with the City agency that employed you during that time. Ask the human resources

department of the City agency for a “Notice of Injury” form. Be as specific as you can about what kind of health problem you are experiencing and when you first became sick. Providing this information will ensure that your claim is processed more quickly. Please submit medical records and, if possible, a letter from your doctor stating that your illness or injury is related to your work during the WTC rescue and recovery operations.

Step #3

Once you have filed a “Notice of Injury” form, your human resources department will send it to the NYC Law Department. You will likely receive a letter or some form of communication from the NYC Law Department notifying you that your claim has been received and either accepted or controverted (. Claims may be controverted because the Law Department contests some aspect of a claim or simply because there is not enough information to make a final determination regarding compensability. Remember, taxpayer dollars are used to pay claims and it is the responsibility of New York City government to ensure that these funds are spent appropriately.

This is only the first step in the process. A controverted claim requires further action by the Workers’ Compensation Board. Before a final determination can be made, a judge at the Workers’ Compensation Board will determine the answers to several important questions, which may include:

- Whether or not you participated in the WTC rescue and recovery operations as defined by the law while you were employed by New York City;
- Whether or not your particular health problem is disabling and the correct date of disablement; and
- Whether or not this health problem is WTC-related.

You may retain an attorney at no charge to represent you in these proceedings (the NY State Workers’ Compensation Board can provide you with referral). In the event that your claim is accepted and you receive compensation, the attorney’s fees will be deducted from the award.

Step #4:

You may receive a letter from the NY State Workers’ Compensation Board asking for medical evidence to support your claim if you have not already provided it.

Your doctor can submit this evidence on C4 forms that are provided by the NY State Workers Compensation Board on its website or in the form of a letter. It is your doctor’s responsibility to submit written evidence in support of your claim. At a minimum, it should include the following information:

- the health problem for which you are seeking Workers' Compensation
- how this health problem is related to your participation in WTC rescue and recovery operations
- if you had this condition before September 11, 2001, how your participation in WTC rescue and recovery operations made the condition worse
- whether the condition prevents you from working

By providing as much evidence as possible from the outset, your doctor can hasten the processing of your claim. If your doctor fails to provide proper medical evidence, the process will be delayed.

Please Note: Even if your physician does submit all the information indicated above, this does not guarantee that your claim will be established.

Step #5:

Once you provide medical evidence in support of your claim, the NY State Workers' Compensation Board usually schedules a hearing before a judge at a location and time that are convenient for you. The hearing can be scheduled whether or not you have an attorney. Depending on the specifics of your case, there can be more than one hearing to help the judge determine the facts.

The NYC Law Department may request that you undergo a medical examination with a doctor selected by the Law Department to verify your medical condition. The examining doctor will file a medical report and send copies to you, the Board and the NYC Law Department. The judge will review this report along with the evidence that you have submitted. Disagreement can occur regarding any fact (see bullets in *Step #4*). The judge can rule on different aspects of your case before making a final ruling. You have the right to appeal these decisions and the final ruling.

Step #6:

If the medical report of the doctor who examines you doesn't agree with the evidence that you and your doctor have submitted, the judge will schedule a trial. In this event, both doctors may be required to testify and answer questions. After both sides have testified, the judge makes a ruling based on the evidence and testimony that have been presented. The judge can issue this ruling immediately or send it in writing to you and the NYC Law Department some time afterwards.

The rates of compensation are determined by the NYS Workers' Compensation Board. They cover the medical costs to treat your disabling condition and may include some replacement for lost wages based on a percentage of your income when you became disabled and other factors.

Step #7:

Both you and the NYC Law Department have the right to appeal the judge's ruling by filing an application for board review. A panel of three NY State Workers' Compensation commissioners reviews the same evidence as the judge before issuing an independent written decision.

State of New York
WORKERS' COMPENSATION BOARD

**REGISTRATION OF PARTICIPATION IN WORLD TRADE CENTER RESCUE,
RECOVERY AND/OR CLEAN-UP OPERATIONS**

(Sworn Statement Pursuant to Workers' Compensation Law §162)

Please read the background and instructions below completely and carefully before completing the Sworn Statement beginning on page 3.

BACKGROUND

1. On August 14, 2006, Workers' Compensation Law (WCL) Article 8-A was enacted to expand the time for a "participant" in World Trade Center rescue, recovery and/or clean-up operations who suffers, or may suffer in the future, from a "qualifying condition" to file a claim for workers' compensation lost wage and medical benefits and to permit the Board to reopen such claims previously denied as untimely. Article 8-A was recently amended to change the definition of "qualifying condition" and to extend the registration deadline.
2. A "Participant in World Trade Center rescue, recovery, or cleanup operations" (referred to as "participant") is defined in WCL §161(1) as any:
 - (a) **employee** who within the course of employment, or (b) volunteer upon presentation to the Board of evidence satisfactory to the Board that he or she:
 - (i) participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September 11, 2001 and September 12, 2002, or
 - (ii) worked at the Fresh Kills Land Fill in New York City between September 11, 2001 and September 12, 2002, or
 - (iii) worked at the New York City morgue or the temporary morgue on pier locations on the west side of Manhattan between September 11, 2001 and September 12, 2002, or
 - (iv) worked on the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York City between September 11, 2001 and September 12, 2002.
3. "World Trade Center site" is defined as "anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan."
4. A "qualifying condition" is defined as "any of the following diseases or condition resulting from a hazardous exposure during participation in World Trade Center rescue, recovery or clean-up operations:
 - (a) Diseases of the upper respiratory tract and mucosae, including conditions such as conjunctivitis, rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, upper airway hyper-reactivity and trachea-bronchitis, or a combination of such conditions;
 - (b) Diseases of the lower respiratory tract, including but not limited to bronchitis, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic;
 - (c) Diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure;
 - (d) Diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions; or
 - (e) New onset diseases resulting from exposure as such diseases occur in the future including cancer, chronic obstructive pulmonary disease, asbestos-related disease, heavy metal poisoning, musculoskeletal disease and chronic psychological disease.
5. In order for the claim of a participant in World Trade Center rescue, recovery or cleanup operations to come within the application of Article 8-A of the Workers' Compensation Law, the participant is required to register with the Workers' Compensation Board ("Board"). The registration form (WTC-12) must be filed not later than September 11, 2018.
6. To register, this Sworn Statement must be accurately and truthfully completed and the original filed with the Board District Office or Downstate Central Mailing Center (see addresses below) not later than September 11, 2018.

INSTRUCTIONS

- A. If you were a "participant" in World Trade Center rescue, recovery, and/or cleanup operations, as that term is defined above, you are required to provide information requested by the Board in the accompanying Sworn Statement if you were exposed to hazardous conditions which cause you to suffer, or may cause you to suffer in the future, from a "qualifying condition" for which you will or may file or have filed a claim for workers' compensation benefits.

B. Please complete the Sworn Statement by providing the following information:

Item 1 - Give your current residential address, including apartment number (if applicable), street number, street name, city, state and zip code. Give mailing address if different from the residential address provided. Be sure to include your telephone number. Please provide your Social Security Number and your date of birth by month/date/year.

Item 2 - This sentence just states that you participated in the World Trade Center rescue, recovery and cleanup operations between September 11, 2001, and September 12, 2002, at the World Trade Center site, the Fresh Kills Land Fill, the New York City morgue or temporary morgue, or the barges between the west side of Manhattan and the Fresh Kills Land Fill.

Item 3 - State whether you participated in the World Trade Center rescue, recovery and/or clean-up operations as an employee (in the course of your employment for pay) or as a volunteer (not in the course of your employment, but upon your own initiative without pay);

Item 4 - List with a brief description any evidence of your activities as a volunteer, for example, badge, letters, statements, pictures, accommodations, etc.;

Item 5 - Fill in the table. Specify the dates and locations of your participation in World Trade Center rescue, recovery and/or cleanup operations to the best of your ability. Describe the work you performed at each location on the date or dates you were there. Give the complete name and address of your employer (s) or the rescue entity/volunteer agency you volunteered with during the period of participation in World Trade Center rescue, recovery and/or clean-up operations, and if applicable and you know, the name of your employer's insurance carrier; and

Item 6 - Indicate whether you previously filed a workers' compensation claim with the Board relating to your participation in World Trade Center rescue, recovery and/or cleanup operations. If you have, you must include the date the claim was filed and the WCB case number.

Item 7 - This item states your understanding that filing the Sworn Statement, and thereby registering as a "participant," is not the same as filing a claim for workers' compensation benefits. To file a claim for benefits you must timely submit to the Board Form C-3 or Form WTCVol-3.

Item 8 - This item states that you understand that the law penalizes those who submit false written documents to the Board and for making false statements.

C. After you complete the Sworn Statement, please review it to insure that it is truthful and accurate.

D. Sign the Sworn Statement in front of a notary public. Your signature on the Sworn Statement must be notarized or the comparable process for the jurisdiction in which you are located when signing this Statement. Do not sign the Sworn Statement until you are in the presence of the notary public. PLEASE NOTE: by signing this statement, you swear and affirm that the information provided and statements made therein are true under the penalty of perjury. You are also stating that you understand that the law prescribes penalties for perjury, for willfully making false statements in connection with an insurance claim, and for submitting a false instrument for filing.

E. You must file the original Sworn Statement with the Board not later than September 11, 2018 to the Board's Centralized Mailing Address: P.O. Box 5205, Binghamton, N.Y. 13902.

ADDITIONAL INFORMATION

F. Filing this Sworn Statement with the Board is **NOT** considered the filing of a claim for workers' compensation benefits. In order to file a claim for workers' compensation benefits, you must submit a Form C-3 (Employee's Claim for Compensation) or WTCVol-3 (World Trade Center Volunteer's Claim for Compensation) to the Board in a timely manner.

G. **PLEASE NOTE:** If you previously filed a claim for workers' compensation benefits relating to your participation in World Trade Center rescue, recovery and/or cleanup operations, which was disallowed by the Board because you did not give timely notice to your employer or did not file a claim with the Board within the time allowed, the Board will reopen and reconsider such claim PROVIDED your Sworn Statement is filed with the Board not later than September 11, 2018.

H. **PLEASE NOTE:**

- "participant" must register by filing a Sworn Statement with the Board not later than September 11, 2018, in order for the extended claim filing period to apply to his/her claim.
- If a "participant" has already filed a claim for workers' compensation benefits for a "qualifying condition" which was disallowed as untimely and now fails to timely file a Sworn Statement with the Board, the "participant's" claim will not be reopened and reconsidered by the Board. Except that a claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September 11, 2012 and September 11, 2015, shall not be disallowed as barred by Section 18 or Section 28 of this chapter if such claim is filed on or before September 11, 2018. Any such claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred between September 11, 2012 and September 11, 2015, and was disallowed by Section 18 or 28 of this chapter shall be reconsidered by the Board.
- The extended period in which to file a claim will only apply to the claim of a "participant" who registers by filing a Sworn Statement with the Board not later than September 11, 2018.

**Registration of Participation in World Trade Center
Rescue, Recovery and/or Clean-up Operations**
(Sworn Statement Pursuant to Workers' Compensation Law §162)

REGISTRATION IS NOT THE FILING OF A CLAIM FOR WORKERS' COMPENSATION BENEFITS

In the Matter of the Registration of

_____, Participant
(Your first name, middle initial and last name)

SWORN STATEMENT

Regarding Participation in World Trade Center
Rescue, Recovery and/or Clean-up Operations.

WCL§162

State of _____)
(State/province where you have this notarized)

) ss

County of _____
(County, or country if outside U.S.A., where you have this notarized)

I, _____ (print first name, middle initial and last name) being duly sworn, depose and say:

1. I am the above named Participant, and I reside at _____
(provide street number and name, city, state, zip code and country if not U.S.A.). My mailing address (if different from residential address is _____.
My telephone number is _____ (area code, number). My Social Security Number is _____ (optional) and my date of birth is _____.
2. I was a participant in World Trade Center rescue, recovery, and/or clean-up operations as that term is defined in Workers' Compensation Law §161 (1). (See instruction page for complete definition.)
3. I participated in the World Trade Center rescue, recovery and/or clean-up operations as defined in Workers' Compensation Law §161 (1) as (specify whether participated as an **employee** or **volunteer**) _____.
(A person participated as an employee if he/she was in the course of his/her employment and was paid. A person participated as a volunteer if it was not part of his/her employment he/she was not directed to participate by the employer and he/she was not paid for the services performed.)
4. I have the following evidence of my activities as a **volunteer** _____
(list any evidence such as pictures, badges, letters, etc. of your volunteer activities). (If you did not participate as a volunteer, cross out this paragraph.)
5. The date(s) and location(s) where I worked as a participant, a description of the work I performed, the name and address of my employer while a participant or the name of the agency or entity that directed my volunteer participation, and the insurance carrier, if applicable and/or known for my employer are as follows:

Date(s) Participated	Location(s) Where Participated	Description of Work Performed	Name of Employer/ Rescue Entity or Agency	Address of Employer/ Rescue Entity or Agency	Name of Employer's Insurance Carrier (if known)

6. I (state whether you **have or have not**) _____ filed a claim with the Workers' Compensation Board (hereinafter referred to as "Board") relating to my participation in World Trade Center rescue, recovery and/or clean-up operations as defined in Workers' Compensation Law §162 (1). I filed my claim on _____ (date claim was filed with the Workers' Compensation Board) and the "WCB Case No." for the claim filed is _____ (eight digit number assigned by the Workers' Compensation Board).
7. I understand that by filing this Sworn Statement with the Board I am not filing a claim for benefits and the Board will not create a case file. I understand that to file a claim I must timely submit to the Board Form C-3, Employee's Claim for Compensation, or Form WTCVol-3, World Trade Center Volunteer's Claim for Compensation.
8. I understand that the law prescribes penalties for perjury, for knowingly making false statements in a written instrument offered for filing with a public entity such as the Board, and for willfully making false statements in connection with an insurance claim. By signing my name below I swear and affirm under penalty of perjury that the information and statements I have made herein are true.

Complete Signature

(ink only -- use blue ballpoint pen if possible)

Sworn to before me this _____ day
of _____, 20_____

Notary Public

2 Broadway, 10th Floor
New York, NY 10004



Metropolitan Transportation Authority

State of New York

**20-YEAR POLICE RETIREMENT
PROGRAM
OF THE
MTA DEFINED BENEFIT PENSION PLAN**



To the Board of Pension Managers:

You must file this form with the MTA Defined Benefit Pension Plan (the "Plan") **on or before September 11, 2015**. If you are permanently incapacitated or become permanently incapacitated in the future, you will also need to file the Application for Disability Retirement Based on World Trade Center Accidental Disability Presumption to receive the benefit.

Please note to be eligible for the benefit, the applicant must have participated in World Trade Center rescue, recovery or clean-up operations for any period of time within the first 48 hours after the first airplane crashed, or a minimum of 40 hours between September 11, 2001 and September 12, 2002.

Locations	Dates
World Trade Center	
Fresh Kills Landfill	
New York City Morgue	
Temporary Morgue on pier locations on the west side of Manhattan	
Barges between the west side of Manhattan and Fresh Kills Landfill	

If you worked at any sites not listed above, list the site with the address below:

Locations	Dates

MTA Police Department will be contacted to verify your involvement:

Name:			
Last:	First:	MI:	
Employee No.:		Date of Birth:	Social Security
Home Address:			
Street:	City:	State:	Zip:
Home Phone:		Work Phone:	

Description of Duties performed during the WTC rescue and recovery or clean-up operations

Were you required to have a physical examination for entry into public service? ☐ Yes ☐ No

If yes, for what position did you have this physical and when?

Position: _____ Date: _____ Employer: _____

If you did not have a physical exam for entry into public service, you MUST authorize the release of all relevant medical records. Please complete the Medical Records Release Authorization below.

NOTE: If you did not undergo a physical exam for entry into public service, the Plan is required to have your authorization to satisfy the requirements of the provisions of the Plan. It is recommended that you gather, maintain and/or submit relevant medical records as early as possible. Doing so may help facilitate a disability application you may file in the future.

MEDICAL RECORDS RELEASE AUTHORIZATION

I, _____, hereby authorize the release of all relevant medical psychiatric, psychological, hospital and health insurance records, including specially protected or listed records such as those relating to drug abuse, alcoholism, genetic testing, psychiatric care and/or confidential HIV/AIDS related information.

All pertinent records are authorized to be released to the Plan and will be used to determine a WTC disability and/or death claim.

I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and it may impact my ability to qualify for disability or accidental death benefits provided under the WTC Accidental Disability Presumption.

By signing below I acknowledge that I have read and accept all of the above and hereby authorize any hospital, medical group, or other organization to disclose all information to the Plan.

Signature _____ Date _____

I certify that the information contained on this form is true.

Signature (Sign Name in Full)

ACKNOWLEDGEMENT TO BE COMPLETED BY A NOTARY PUBLIC

State of _____ County of _____

On the day _____ of _____ in the year _____ before me, the undersigned, personally appeared

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC (Please sign and affix stamp)

NOTE: In accordance with the Federal Privacy Act of 1974 you are hereby advised that disclosure of your Social Security account number is required by the Plan. Your number will be used in identifying your retirement records and in the administration of the Plan.



Metropolitan Transportation Authority

State of New York

July 2015

**World Trade Center Presumption
Rescue Recovery or Clean Up Operations**
MTA 20 Year Police Retirement Program of the
Metropolitan Transportation Authority
Defined Benefit Pension Plan (MTADBPP)

From Ground Zero to the Fresh Kills Landfill, men and women worked around the clock to do their part in helping New Yorkers and our country recover from the devastation at Ground Zero. This package provides information about a change to the MTA 20-Year Police Retirement Program that may apply to you if you were one of the workers who helped in the rescue, recovery or clean up efforts at the World Trade Center site. (World Trade Center site shall mean anywhere below a line starting from the Hudson River and Canal Street, east on Canal Street to Pike Street; south on Pike Street to the East River and extending to the lower tip of Manhattan.) This change is one small way to help those who participated in this historic effort, including MTA police officers, who gave so much. Please read this information carefully. If you have any questions about this issue contact Peter Geraghty at (646)252-1521 or Winston Thompson at (646)252-1529 or via e-mail pgeraght@mtahq.org & wthompso@mtahq.org.

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

Eligibility Requirements

To be eligible for this presumption, you must have been an active member in the MTADBPP, or in New York City or New York State police service on September 11, 2001 if you have transferred your New York City Police Pension Fund or New York State Police and Fire Retirement System membership to the MTADBPP and:

1. Participated in the World Trade Center rescue, recovery or clean up operations for any period of time within the first 48 hours after the first airplane crashed or a minimum of 40 hours any time between September 11, 2001 and September 12, 2002 at:
 - The World Trade Center site (defined as the area below a line starting from the Hudson River and Canal Street bearing east on Canal Street to Pike Street, continuing south on Pike Street to the East River and extending to the lower tip of Manhattan);
 - The New York City morgue or any temporary morgues;
 - The Fresh Kills Landfill; or
 - On the barges that ran between Manhattan and the Fresh Kills Landfill.

You may also be eligible if you:

- Participated at specific New York City police department, fire department or emergency medical services sites during the first 24 hours after the first airplane crashed; or
 - Repaired, cleaned or rehabilitated vehicles or equipment owned by the City of New York, regardless of whether the work was done at one of the above locations.
2. Have been required to take, and then passed, a physical examination upon entry into public service, which did not show a qualifying condition. If you were not required to take a physical examination, you can authorize the release of all relevant medical records prior to September 11, 2001, showing no evidence of a qualifying condition. We highly recommend you gather, maintain and/or submit relevant medical records as early as possible to facilitate processing an application you may file in the future.
 3. Be found permanently incapacitated by the MTADBPP due to the qualifying condition or health impairment, and unable to perform your job.
 4. If you are disabled, file a World Trade Center Accidental Disability Presumption Form. If you have not already done so, you must file a World Trade Center Accidental Disability Presumption Form on or before September 11, 2015. (This represents an extension of the filing period from September 11, 2010).
 5. To preserve your right to file at some time in the future if you are presently not disabled, file a World Trade Center Accidental Disability Presumption Form on or before September 11, 2015. (This represents an extension of the filing period from September 11, 2010).

Qualifying Conditions

Qualifying conditions for this presumption include:

- Upper respiratory tract (rhinitis, sinusitis, pharyngitis, laryngitis, vocal chord disease, upper airway hyper-reactivity and tracheo-bronchitis, or a combination of such conditions);
- Lower respiratory tract (bronchitis, chronic obstructive pulmonary disease, asthma, reactive airway dysfunction syndrome and various forms of pneumonitis — hypersensitivity, granulomatous, or eosinophilic);
- Gastroesophageal tract (esophagitis and reflux disease);
- Psychological (post-traumatic stress disorder, anxiety, depression, or any combination of these conditions);
- Skin (conjunctivitis, contact dermatitis or burns, infectious, irritant, allergic, idiopathic or non-specific in nature, caused by exposure or aggravated by exposure); and
- New onset diseases (resulting from exposure as such diseases may occur in the future including cancer, asbestos-related diseases, heavy metal poisoning, musculoskeletal disease and chronic psychological diseases).

Filing Requirements

If You Are Not Disabled

If you meet requirements 1 and 2 under Eligibility Requirements, we strongly encourage you to file a World Trade Center Accidental Disability Presumption Form by September 11, 2015. Filing this form will protect your rights, and the rights of your beneficiaries to apply for benefits in the future.

If You Have Not Retired From the MTA

If you meet requirements 1 and 2 under Eligibility Requirements and wish to file for a disability benefit now, you must file a World Trade Center Accidental Disability Presumption Form.

If You Have Retired From the MTA

You may apply for a reclassification of your benefit to a World Trade Center accidental disability retirement if you meet requirements 1 and 2 under Eligibility Requirements and you would have been permanently disabled and unable to perform your job had your condition been known and fully developed at the time of your retirement.

If approved, your World Trade Center accidental disability retirement will become effective as of the date of reclassification. It is not retroactive to your date of retirement. Your option selection cannot be changed as a result of the reclassification.

Applying for Reclassification

To apply for a reclassification of your service or disability retirement benefit to an accidental disability retirement benefit, you must:

- Meet the same eligibility requirements as previously stated; and
- Complete a World Trade Center Accidental Disability Presumption Form and send it to the MTA Defined Benefit Pension Plan office.

Note: Your employer, at the time of your retirement, will be given an opportunity to make a statement regarding your reclassification application.

Provisions for an Accidental Death Benefit

The MTADBPP provides for an accidental death benefit to the beneficiaries of certain retirees who participated in the World Trade Center rescue, recovery or cleanup. Your beneficiaries may convert your retirement benefit to an accidental death benefit by filing for this benefit if:

- You, or your eligible beneficiary in the event of your death, filed an Application for World Trade Center Accidental Disability Presumption Form by September 11, 2015.
- You retired under a service or disability retirement;
- You have been retired 25 years or less at the time of your death; and
- It is determined that the cause of death was the result of a qualifying condition.

Only your spouse, dependent children or dependent parent are eligible to receive the accidental death benefit. Eligible beneficiaries and the time period for filing the application are the same as those for the regular accidental death benefit provided by your retirement plan. Please consult your plan booklet or contact us for more information regarding this benefit, including filing deadlines.

MTA Consolidated Pensions
MTA Defined Benefit Pension Plan
2 Broadway, 10th Floor
New York, NY 10004
MTADBPlan@mtahq.org
646-252-1117



- ❖ Bay Shore
- ❖ Bronx
- ❖ Brooklyn
- ❖ Garden City
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- ❖ Queens
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