

Disease Linked to Drowning Rule Fire Pension Fund Erred With WTC Denial

By MARK TOOR

A state appeals court has ordered the Fire Department Pension Fund to reconsider its refusal to grant a World Trade

Center Death Benefit pension in the case of a retired Lieutenant who drowned at a Florida beach.

The widow of Lieut. Cruz Fernandez says her husband



SECOND TIME AROUND: For the second time, a court has ordered the Fire Department Pension Fund to consider whether survivors of retired Lieut. Cruz Fernandez, shown in his Fire Department uniform, should receive a World Trade Center Death Benefit. The pension fund had rejected his family's contention that heart problems as a result of exposure to 9/11 debris led to his drowning in 2006.

died in July 2006 because of heart problems that arose from illnesses he contracted at Ground Zero, including debris in the lungs that can cause heart failure. The pension fund concluded that the death was a simple case of accidental drowning.

Ignored Law's Presumption

The attorney for Jackie Kaht Fernandez, Chet Lukaszewski, said the rejection by the pension board was another case of such panels ignoring the World Trade Center Presumption amendment to city pension law.

The amendment says that any officer suffering from respiratory, gastrointestinal, skin or psychological diseases, or "new-onset diseases resulting from exposure as such diseases occur in the future including cancer" can cite exposure to Ground Zero debris as the cause of the illness. If the pension board disagrees, it must provide medical evidence to support its stand, rather than just stating a rejection.

"The medical board ultimately denied the petitioner's application in a memorandum decision and, although it enumerated the evidence which it reviewed in reaching its decision, failed to discuss any of it," said the July 11 decision written by State Supreme Court Justice Richard Velasquez.

The Appellate Division of State Supreme Court reversed the board's initial decision, saying it had not adequately considered Ms. Fernandez's arguments that her husband's drowning was precipitated by his exposure to Ground Zero toxins. The medical board denied the application for a second time in 2011.

Evidence Withheld

Mr. Lukaszewski said the Board of Trustees had failed to present all the evidence to the medical board, including some evaluations by experts saying the drowning was



CHET LUKASZEWSKI: Board of Trustees at fault.

caused by 9/11 exposure and a statement by Mr. Fernandez's 11-year-old nephew, Hayden Kaht, who was riding boogie boards with him when the drowning occurred.

"The next thing he noticed was that his uncle was non-responsive, floating on his boogie board with his head above water," Justice Velasquez's decision said. "According to Hayden, the decedent was foaming at the mouth and his eyes rolled back in his head, which all occurred while his head was above the water."

Why Exclude Eyewitness?

In the interview, Mr. Lukaszewski said, "The whole Board of Trustees is at fault because it refused to forward to the medical board the eyewitness statement. I've seen criminal cases where a four-year-old is deemed competent to testify in a murder trial."

He said he hoped the board would grant the more-generous World Trade Center pension once it considered the eyewitness statement and the experts' opinions.

"They're supposed to get it right," Mr. Lukaszewski said. "They're not supposed to win. They're not supposed to fight against their members to uphold their original decision."