

Court Tells Police Board

Must Review Pension Plea Based on Mental Condition

By MARK TOOR

The Police Pension Fund Board of Trustees was wrong when it denied a disability pension to an officer with a psychological disorder that caused her to feel pain that was out of proportion to her injuries, a State Supreme Court Justice ruled.

Justice Judith J. Gische sent the case back to the pension fund for reconsideration. She found the trustees had "failed to articulate any rational basis" for not accepting the findings of their Medical Board, which determined that Police Officer Jill Rosenthal's somatization disorder was disabling.

Medical Board's Discovery

Ms. Rosenthal's attorney, Chet Lukaszewski, said that she had cited orthopedic problems when she applied for the pension and that it was the Medical Board that diagnosed her with somatization disorder and recommended her for the three-quarters line-of-duty disability pension. The doctors felt her orthopedic condition was not disabling but her somatization disorder was, he said.

"It was the Medical Board who introduced this and the Board of Trustees who decided not to accept it," he said.

Ms. Rosenthal joined the NYPD in 2002. She was injured in 2005, while arresting a suspect. She reported injuries to the right hand and middle finger, the neck and right shoulder, right elbow, right wrist and right hand and a cut to her middle finger, according to Justice Gische's decision.

In February 2007, shortly after the department recommended a medical review of her case, she slipped and fell down the stairs in a Police Department building. She reported injuries to her right shoulder, right wrist, neck, lower back, right ankle, both knees and buttocks. In May 2007, she



CHET LUKASZEWSKI: Must review pension plea.

filed an application for accidental-disability retirement. The Medical Board reported "no significant orthopedic findings precluding [her] from performing the full duties" of a Police Officer.

Injured by Drunk Driver

On Jan. 1, 2008, she became involved in a struggle with a drunk-driving suspect, hurting her lower back and aggravating her previous injuries, according to the decision. Eleven months later, the medical board reversed its earlier findings and diagnosed her with somatization disorder related to multiple line-of-duty injuries, triggered by the injury incurred when making the arrest in 2005.

The Board of Trustees asked the Medical Board twice for additional information. In September 2009, the board declared that its decision was in line with the definition provided by the American Psychiatric Association.

"The pain and other symptoms people with this disorder feel are real, and are not created or faked on purpose," according to MedlinePlus, which is affiliated with the National Institutes of Health. "...As researchers study the connections between the brain and body, there is more evidence that emotional well-being affects the way in which people perceive pain and other symptoms...Stress often worsens the symptoms."

MedlinePlus continued: "A thorough physical examination and diagnostic tests are performed to identify physical causes. The types of tests that are done depend on what symptoms you have. A psychological evaluation is performed to identify related disorders. If, after you have a thorough evaluation, no physical cause is found to explain the symptoms, somatization disorder may be diagnosed...You should not be told that your symptoms are imaginary."

Didn't Cite Evidence for Findings

A pension fund staff member told Ms. Rosenthal that the Medical Board has "a limited history of [granting benefits for] brain and psychological disabilities." Also, the staffer said, "we looked for a nexus between the psychological disability and the first injuries that the officer may have sustained. In this case it's very difficult for us to find a nexus." On that basis, the trustees voted no on a line-of-duty disability.

Justice Gische found that "the Board of Trustees' denial was made summarily, without any indication of what evidence, if any, the board relied upon on reaching its conclusion." If the trustees reach a different decision than the Medical Board, she wrote, "the Board of Trustees should articulate what is the basis for their decision." The two reasons cited by the pension-fund staff member were not sufficient, she said. She determined that the trustees' decision "was not based upon objective medical evidence."

The Police Pension Fund said it could not comment on the case because the judge's decision to send the case back for reconsideration means that it is technically still in litigation.