

The Chief

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THE GOOD OLD DAYS: Police Officer Eddie Maldonado before he was forced to retire because of a cancer he says was exacerbated by exposure to debris at Ground Zero. He lost his bid for a three-quarters line-of-duty pension before the Police Pension Fund, State Supreme Court and the Appellate Division, but the Court of Appeals has agreed to hear his claim the Fund ignored a law requiring that illnesses like his be presumed to have been caused by 9/11.

Says Law Favors Cancer Claim

Officer Can Appeal Denial Of 9/11 Disability Pension

By MARK TOOR

The state's highest court has agreed to hear the case of a cancer-stricken NYPD officer who worked at Ground Zero but was denied a three-quarters disability pension despite a law that his lawyer says requires that his condition be considered line-of-duty.

The officer, Eddie Maldonado, was denied the special tax-free pension by the Police Pension Fund board and in appeals in State Supreme Court and the State Appellate Division. The lower courts said his contention that exposure to the 9/11 debris caused his tumor to grow in size was "unsupported by scientific proof." The state Court of Appeals, however, agreed to consider an appeal.

Law Favors Applicant

His attorney, Chet Lukaszewski, said the lower-court decisions did not follow a World Trade Center Presumption amendment to city pension law, which says 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 Fund rejects such a request, he said in his appeals brief, the law "requires a rebuttal with competent evidence, as opposed to a simple disagreement and rejection."

"The crux of it is that the Legislature was looking to protect first-responders, but if the Pension Fund doesn't apply the law correctly then the crux is dissolved," Mr. Lukaszewski said in an interview. "To allow the fund to say 'you didn't offer hard-and-fast proof' negates the entire presumption of the law."

Mr. Maldonado, in an interview, said he believed the issue of cancers related to 9/11 exposure had been "pushed aside" and was gratified that his case "could help other cops out there who are in the same situation as me."

'Toxins Fueled the Cancer'

The Federal Government has ruled that cancer is not one of the diseases that can be covered under the James Zadroga 9/11 Health and Compensation Act, saying there is insufficient evidence so far that exposure to Ground Zero debris can cause it. But the National Institute of Occupational Safety and Health is reviewing that decision.

The Patrolmen's Benevolent Associ-

ation notes that virulent cancers most often found in elderly men are showing up in relatively young officers who worked on the pile. The PBA also says the rate of cancers in officers exposed to the debris is much higher than in the general population.

Shortly before 9/11, Mr. Maldonado noticed a walnut-sized lump in his thigh he thought was a muscle cramp. He didn't visit a doctor until early November, after working security at the Ground Zero perimeter for more than 30 days. The doctor found a softball-size tumor, and the cancer had also spread to bone and lung tissue.

'It Grew As If on Steroids'

"An oncologist said the tumor growth and cancer progression was beyond extreme, and theorized that the toxins fueled the cancer," Mr. Lukaszewski said. "The tumor grew as if on steroids." His doctors "felt strongly that his 9/11-exposure 'injuries,' even if not the cause of the disease, very likely accelerated the disease's development," according to the appeals brief.

Surgical removal of the tumor cost Mr. Maldonado most of his upper leg, disabling him. He also underwent a year of chemotherapy to get the cancer out of his bone and lungs.

The Pension Fund denied Mr. Maldonado a line-of-duty disability pension, arguing that there was no proof offered that Ground Zero toxins caused or fueled cancer, and that the tumor existed before 9/11. He retired in 2009 on a non-line-of-duty disability pension, which pays 50 percent of salary and, unlike the line-of-duty pension, is subject to taxes.

Under the World Trade Center Presumption, Mr. Lukaszewski argued, "first-responders get presumption as a protection for the danger they were caused to face by the extraordinary line-of-duty efforts resulting from 9/11." He warned that first-responders take the risks they do assuming that they and their families will be taken care of should the worst happen. If they can't depend on that, he said, many might be reluctant to take those risks in the future.

Transformed Life for Worse

Mr. Maldonado, who is married with four children, described how his illness has changed his life. "Before 9/11 I was active. I played softball, I was active in the street as a cop. Then everything changed," he said. He now suffers from skin rashes and other illnesses that accompany cancer treatment. Financial problems are also an issue: "I would do a lot of overtime, little side jobs—all of that came to a halt."

"Thank God for my family and friends, and for the ability to continue no matter what comes our way," he said.