



**JUSTICE FOR FDNY WIDOW: Jackie Fernandez with her husband, Lieut. Cruz Fernandez, shortly before his death in 2006. If the pension board accepts her claim that his drowning was a result of a 9/11-related illness, Ms. Fernandez will receive her husband's full pension.**

## 9/11 Bid Denied Twice by Board

# *Appeals Court Gives Widow Another Shot at Benefits*

By FLORA FAIR

In what could be a pivotal case for 9/11 first-responders and their families, the widow of a Firefighter won an appeal of her application for death benefits in State Supreme Court last week.

### Soot Buildup in Lungs

An Appellate Division panel ruled that the Fire Pension Fund Medical Board didn't adequately consider evidence in a 2008 petition for accidental death benefits brought by Jackie Fernandez.

Her husband, Lieut. Cruz Fernandez, drowned in shallow water at a Fort Lauderdale, Fla. beach in 2006, where he was spending time with his family. An autopsy report from the Broward County Medical Examiner's Office indicated that he had a heart condition and anthracosis (soot buildup) in his lungs.

Mr. Fernandez, a 24-year veteran of the FDNY, assisted in rescue and recovery efforts at the World Trade Center site. The Broward Medical Examiner and a toxicologist concluded the drowning was precipitated by his weakened respiratory system, which

was a result of toxic exposure during his work on the pile.

Attorney Chet Lukaszewski, who represented Ms. Fernandez in the appeal, said that prior to her husband's WTC exposure, "He had run nine marathons and he was 52 years old. He was in great shape. Once he left the job, his health began to deteriorate...his heart just gave out on him." He called Mr. Fernandez something of a legend in the department, saying he was nicknamed Bombero (Spanish for Firefighter). After retiring in 2002, he moved to Florida with his family.

### Medical Findings Rejected

The ruling reverses an April 2009 decision in Brooklyn Supreme Court denying the petition for appeal and dismissing the case. Ms. Fernandez initially applied for accidental death benefits in March 2007 with the Fire Pension Fund Board of Trustees, claiming that her husband died "from a qualifying World Trade Center condition," or a disease of the lower respiratory tract that led to his drowning—"a natural and proximate result of an accident sustained in the per-

formance of duty." She submitted letters from a chemist and biochemist, stating that it was likely that lung damage from toxic exposure at the World Trade Center had weakened his heart and, in turn, led him to drown.

The Medical Board recommended denying the application, explaining only that it had reviewed the evidence and found it "noteworthy that there is evidence that the member died from drowning," and that it "did not feel that the drowning appears to be secondary to the World Trade Center exposure."

Ms. Fernandez then submitted more evidence to the Board of Trustees, including an amended death certificate issued by the Broward Medical Examiner, changing the cause of death from "Drowning" to "Drowning precipitated by prior heart condition." A toxicologist's letter, also submitted to the board, said that pulmonary damage caused by exposure to toxins at the WTC site could, "with reasonable certainty," have weakened his cardiovascular system and indirectly led to the drowning.

The Medical Board upheld its previous recommendation. The Trustees then denied the application, saying there was insufficient evidence that the death was caused by a qualifying 9/11-related condition.

### Reasons for Reversal

In its reversal, the Appellate panel cited prior rulings with cause-of-death determinations supported by an informed medical opinion. The court also found that the Trustees' rejection should include a reason for the denial, and that the Medical Board's explanation insufficiently addressed the medical evidence. Mr. Lukaszewski felt the Medical Board "oversimplified a very complex matter" in its decision-making.

"There is the possibility that the city could try and appeal the decision to the [State] Court of Appeals, but I don't think it's the type of case that they will hear," he said.

The petition must now be reconsidered by the Medical Board, which will make a new recommendation to the Board of Trustees. Mr. Lukaszewski said the reconsideration should occur fairly quickly, adding that he was "really happy" with the language of the Appellate Court decision.

He said Ms. Fernandez hopes that her case will help other first-responders who are having trouble with the pension system. "This case stands for the fact that there has to be a detailed and good-faith assessment of the application of responders who became sick years later based on their toxic exposure at the time of the World Trade Center attacks," he said. "It sets a strong precedent for future 9/11 pension cases and line-of-duty death cases."