

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

Decided and Entered: September 29, 2011

512139

In the Matter of EUGENE
PIERCE,
Petitioner,
v

MEMORANDUM AND JUDGMENT

KEVIN F. MURRAY, as Deputy
State Comptroller,
Respondent.

Calendar Date: September 13, 2011

Before: Mercure, J.P., Peters, Stein, Garry and Egan Jr., JJ.

Baker, Leshko, Saline & Blosser, White Plains (Anthony C. Saline of counsel), for petitioner.

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

Peters, 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 applications for accidental and performance of duty disability retirement benefits.

Petitioner, a police officer, applied for accidental and performance of duty disability retirement benefits based upon injuries to his back, neck and left knee sustained in a work-related car accident. Thereafter, petitioner filed additional applications for accidental and performance of duty disability retirement benefits, based upon the same physical injuries as

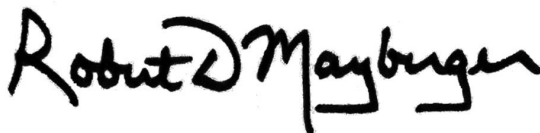
well as posttraumatic stress disorder and depression. Petitioner's applications were initially denied and petitioner sought a hearing and redetermination. The Hearing Officer denied petitioner's applications, finding that petitioner is not physically permanently disabled from performing his duties as a police officer. Upon review, the Comptroller affirmed, prompting petitioner to commence this proceeding.

The determination fails to set forth findings with regard to petitioner's claimed incapacity due to his psychiatric condition. This failure prevents us from conducting an adequate review of the determination (see Matter of Mazzotte v DiNapoli, 70 AD3d 1233, 1234 [2010]; Matter of Cantone v DiNapoli, 50 AD3d 1307, 1307 [2008]). Accordingly, as respondent has acknowledged, the determination must be annulled and the matter remitted for further administrative proceedings.

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

ADJUDGED that the determination is annulled, without costs, and matter remitted to the Comptroller for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court