

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

Decided and Entered: January 12, 2012

512879

In the Matter of PAUL BRUNNER,
Appellant,

v

MEMORANDUM AND ORDER

JOHN BERTONI, as Mayor of the
Village of Endicott, et al.,
Respondents.

Calendar Date: November 14, 2011

Before: Mercure, Acting P.J., Rose, Lahtinen, Kavanagh and
McCarthy, JJ.

Tuttle Law Firm, Latham (James B. Tuttle of counsel), for
appellant.

Coughlin & Gerhardt, L.L.P., Endicott (Paul J. Sweeney of
counsel), for respondents.

Mercure, Acting P.J.

Appeal from a judgment of the Supreme Court (Lebous, J.),
entered October 29, 2010 in Broome County, which dismissed
petitioner's application, in a proceeding pursuant to CPLR
article 78, to review a determination of respondent Mayor of the
Village of Endicott denying petitioner's request for General
Municipal Law § 207-c benefits.

Petitioner, a police officer, sustained serious injuries in
a 2008 off-duty motorcycle accident, including a dislocated left
thumb joint that required surgery to correct. Upon his return to
work with the Village of Endicott Police Department, he undertook
mandatory firearms training that involved repeatedly firing his

sidearm with his left hand. He could not complete the training due to pain in his left thumb and, as a result, stopped working for eight months until learning how to shoot with his right hand.

Petitioner applied for benefits pursuant to General Municipal Law § 207-c, and the police chief denied his application. A Hearing Officer thereafter recommended that the benefits be granted. Respondent John Bertoni, the Mayor of the Village of Endicott, disagreed and denied the application, prompting this CPLR article 78 proceeding. Supreme Court dismissed the petition, and petitioner appeals.¹

We affirm. General Municipal Law § 207-c provides police officers such as petitioner "with benefits, including full wages, where they are injured 'in the performance of [their] duties'" (Matter of Martino v County of Albany, 47 AD3d 1052, 1052 [2008], quoting General Municipal Law § 207-c [1]). To demonstrate entitlement to those benefits, petitioner must "prove a direct causal relationship between job duties and the resulting illness or injury" (Matter of White v County of Cortland, 97 NY2d 336, 340 [2002]; accord Matter of Theroux v Reilly, 1 NY3d 232, 244 [2003]). In our view, while "[p]reexisting non-work-related conditions [would] not bar recovery . . . [if petitioner's] job duties were a direct cause of the disability," substantial evidence in the record amply supports Bertoni's finding that they were not a direct cause (Matter of White v County of Cortland, 97 NY2d at 340).

In that regard, orthopedic surgeon Charles Totero conducted an independent medical examination of petitioner and opined that

¹ Although petitioner incorrectly invoked the arbitrary and capricious standard of review before Supreme Court, the petition raised an issue of substantial evidence and the matter should have been transferred to this Court pursuant to CPLR 7804 (g); on this appeal, we treat the matter as having been properly transferred and decide the substantial evidence issue de novo (see Matter of Thibodeau v Northeastern Clinton Cent. School Bd. of Educ., 39 AD3d 940, 941 [2007]; Matter of Barnwell v Goord, 268 AD2d 725, 725 [2000], lv denied 95 NY2d 751 [2000]).

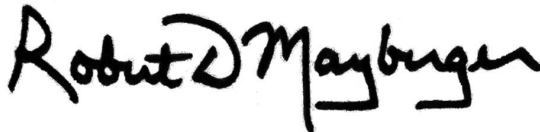
he was not injured during the firearms training. Although discharging his firearm caused petitioner discomfort, the pain stopped when he ceased fire, and Toterò indicated that the pain was caused by arthritis stemming solely from the prior thumb injury (see e.g. Matter of Steinmann v Hevesi, 18 AD3d 1011, 1012 [2005], lv denied 5 NY3d 710 [2005]). Bertoni was free to credit Toterò's opinion and, inasmuch as "mere fortuity of timing does not entitle an employee to benefits under General Municipal Law § 207-c" in the absence of a causal connection between petitioner's duties and the disability, the application was properly denied (Matter of Greenwald v County of Schenectady, 85 NY2d 527, 534 [1995]; see Matter of Ridge Rd. Fire Dist. v Schiano, 16 NY3d 494, 499 [2011]; cf. Matter of Schmidt v Putnam County Off. of Sheriff, 49 AD3d 761 [2008]).

Petitioner's remaining arguments have been considered and found to be without merit.

Rose, Lahtinen, Kavanagh and McCarthy, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

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