

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

Decided and Entered: July 5, 2012

514139

In the Matter of THOMAS J.
REYNOLDS,
Petitioner,
v

MEMORANDUM AND JUDGMENT

THOMAS P. DiNAPOLI, as
State Comptroller,
Respondent.

Calendar Date: May 25, 2012

Before: Peters, P.J., Lahtinen, Malone Jr., Stein and Garry, JJ.

Bartlett, McDonough & Monaghan, White Plains (Benai L. Lifshitz of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Treasure of counsel), for respondent.

Stein, 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 respondent which denied petitioner's application for accidental disability retirement benefits.

Petitioner, a police officer, was permanently disabled as the result of injuries sustained while attempting to subdue a suspect who had been handcuffed and placed in the rear of a police car. Petitioner's application for performance of duty disability retirement benefits was approved, but his application for accidental disability retirement benefits was denied by respondent on the ground that the incident did not constitute an

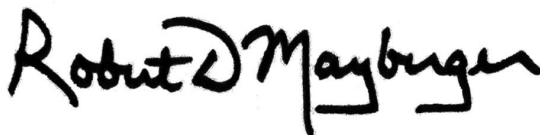
accident within the meaning of the Retirement and Social Security Law. Petitioner then commenced this CPLR article 78 proceeding to challenge that determination.

We confirm. To establish entitlement to accidental disability retirement benefits, a petitioner must demonstrate that the incident giving rise to the injuries was a sudden mischance unrelated to the ordinary risks of performing his or her job (see Matter of Lenci v DiNapoli, 92 AD3d 1078, 1078 [2012]; Matter of Rykala v New York State Comptroller, 92 AD3d 1077, 1077-1078 [2012]). This Court has repeatedly upheld respondent's denial of accidental disability retirement benefits when a law enforcement officer sustains an injury in the course of restraining a disruptive individual, as that type of physical contact is inherent in the performance of an officer's duties (see Matter of Rykala v New York State Comptroller, 92 AD3d at 1077-1078; Matter of Carpiniello v DiNapoli, 88 AD3d 1045, 1046 [2011]; Matter of Welsh v New York State Comptroller, 67 AD3d 1167, 1169 [2009], lv denied 14 NY3d 706 [2010]). Inasmuch as petitioner's own testimony indicated that he was injured in the course of attempting to subdue an unruly suspect, we find that substantial evidence supports respondent's determination.

Peters, P.J., Lahtinen, Malone Jr. and Garry, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

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