

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

Decided and Entered: June 20, 2019

527951

In the Matter of SULLIVAN COUNTY
PATROLMEN'S BENEVOLENT
ASSOCIATION, INC., et al.,
Respondents,

MEMORANDUM AND ORDER

v

COUNTY OF SULLIVAN et al.,
Appellants.

Calendar Date: May 3, 2019

Before: Garry, P.J., Egan Jr., Lynch, Clark and Rumsey, JJ.

Roemer Wallens Gold & Mineaux LLP, Albany (Benjamin D. Heffley of counsel), for appellants.

The Tuttle Law Firm, Clifton Park (James B. Tuttle of counsel), for respondents.

Clark, J.

Appeal from a judgment of the Supreme Court (Schreibman, J.), entered July 12, 2018 in Sullivan County, which granted petitioners' application, in a proceeding pursuant to CPLR article 78, to annul a determination of respondent Sullivan County Director of Risk Management denying petitioner Roy Rogers' application for disability benefits under General Municipal Law § 207-c.

Petitioner Roy Rogers (hereinafter petitioner) – a deputy sheriff with the Sheriff's Office of respondent County of

Sullivan – severed a nerve and tendon in his left middle finger when, during his overnight shift on August 26, 2017, he used his pocket knife to release the blade of his partner's jammed pocket knife. Petitioner's injuries required surgical repair and rendered him unable to return to work until December 6, 2017. Petitioner applied for benefits under General Municipal Law § 207-c, but that application was denied. Following an evidentiary hearing held pursuant to local law, a Hearing Officer recommended upholding the denial on the basis that petitioner's injuries did not occur in the performance of his duties. Respondent Sullivan County Director of Risk Management issued a determination adopting the Hearing Officer's recommendation in its entirety. Petitioners thereafter commenced this CPLR proceeding to challenge the determination. Following joinder of issue, Supreme Court annulled the determination, prompting this appeal.

Initially, we note that the administrative determination was "made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law," and, thus, the appropriate standard of review is whether the determination is supported by substantial evidence (CPLR 7803 [4]; see Matter of Mankowski v Nassau County, 160 AD3d 739, 742 [2018]; Matter of Campo v City of Mount Vernon, 156 AD3d 694, 694 [2017]). Accordingly, Supreme Court should have transferred the matter to this Court pursuant to CPLR 7804 (g). Although Supreme Court did not do so, we shall treat the matter as having been properly transferred and consider the substantial evidence issue de novo (see Matter of Mankowski v Nassau County, 160 AD3d at 741; Matter of Brunner v Bertoni, 91 AD3d 1100, 1101 n [2012]).

"General Municipal Law § 207-c, as relevant here, provides [police] officers 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]; accord Matter of Brunner v Bertoni, 91 AD3d at 1101). The officer seeking benefits must prove a "direct causal relationship between job duties and the resulting illness or injury" (Matter of Theroux v Reilly, 1 NY3d 232, 243-244 [2003] [internal quotation marks and

citation omitted]; see Matter of Brunner v Bertoni, 91 AD3d at 1100; Matter of D'Accursio v Monroe County, 74 AD3d 1908, 1909 [2010], lv denied 15 NY3d 710 [2010]; Matter of Martino v County of Albany, 47 AD3d at 1052-1053). However, the officer is not required to establish that the injury-producing activity was borne out of the heightened risks associated with being a police officer (see Matter of Theroux v Reilly, 1 NY3d at 241, 243-244; Matter of Martino v County of Albany, 47 AD3d at 1052-1053).

The unrefuted hearing evidence established that, although the pocket knives were personally owned by petitioner and his partner and were not official equipment issued by the Sheriff's Office, the officers were strongly encouraged to carry personal knives with them while they were on duty. The hearing testimony demonstrated that officers were instructed during field training to obtain and carry a knife to assist them with various tasks, such as cutting seatbelts or cutting down people who attempted suicide by hanging. The testimony also demonstrated that officers are trained to use their personal knives as a last-line of defense should they be stripped of their firearms or other weapons and that most, if not all, officers in the Sullivan County Sheriff's Office regularly carried a personal knife. This evidence clearly established the utility of carrying a functioning knife while on duty and the necessity of fixing the jammed knife so that petitioner and his partner could safely respond to their next call. Under these circumstances, we find that a direct causal relationship exists between petitioner's job duties and injuries and that the Hearing Officer's findings to the contrary are not supported by the record. Indeed, in finding no causal relationship, the Hearing Officer erred by placing too much emphasis on the fact that the partner's pocket knife became jammed during the course of opening a snack, while ignoring the safety concerns of responding to a call without first fixing the defective knife. Accordingly, the determination to deny petitioner benefits under General Municipal Law § 207-c is not supported by substantial evidence (compare Matter of Martino v County of Albany, 47 AD3d at 1053).

Garry, P.J., Egan Jr., Lynch and Rumsey, JJ., concur.

ORDERED that the judgment is affirmed, with 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