

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

Decided and Entered: February 9, 2012

513195

In the Matter of the Claim of
JOHN RYKALA,
Petitioner,

v

MEMORANDUM AND JUDGMENT

NEW YORK STATE COMPTROLLER
et al.,
Respondents.

Calendar Date: January 13, 2012

Before: Mercure, Acting P.J., Peters, Malone Jr., Kavanagh and
McCarthy, JJ.

Edelstein & Grossman, New York City (Jonathan I. Edelstein
of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, Albany (Allyson B.
Levine of counsel), for respondents.

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 Comptroller denying
petitioner's request for accidental disability retirement
benefits.

Petitioner, a court officer, sustained injuries when he
fell after his foot became entangled in a file cart while he was
attempting to remove an unruly prisoner from the courtroom.
Petitioner subsequently applied for accidental disability
retirement benefits. Following a hearing, a Hearing Officer
denied the application, finding that the incident did not
constitute an accident within the meaning of Retirement and

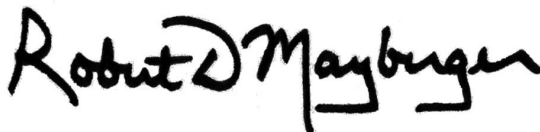
Social Security Law § 605-a. Respondent Comptroller adopted the Hearing Officer's findings and this CPLR article 78 proceeding ensued.

"For purposes of accidental disability retirement benefits, the underlying accident must be a sudden, fortuitous, out of the ordinary and unexpected event that does not result from an activity undertaken in the performance of regular or routine employment duties" (Matter of Welsh v New York State Comptroller, 67 AD3d 1167, 1168 [2009], lv denied 14 NY3d 706 [2010] [internal quotation marks and citation omitted]). Here, petitioner acknowledged that his job duties included physically restraining persons causing a disturbance in the courtroom. It is undisputed that petitioner's injuries occurred while he was struggling with an unruly prisoner. Under the circumstances herein, substantial evidence supports the Comptroller's determination and it will not be disturbed (see Matter of Olivera v New York State & Local Employees' Retirement Sys., 82 AD3d 1434, 1434-1435 [2011]; Matter of Silver-Smith v New York State & Local Retirement Sys., 298 AD2d 696, 697 [2002]).

Mercure, Acting P.J., Peters, Malone Jr., Kavanagh and McCarthy, 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