

constitute an accident within the meaning of the Retirement and Social Security Law. Respondent adopted the Hearing Officer's decision, and this CPLR article 78 proceeding ensued.

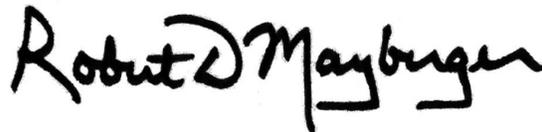
We annul. Petitioner bore the burden of establishing her entitlement to accidental disability retirement benefits and respondent's determination will be upheld if supported by substantial evidence (see Matter of Scofield v DiNapoli, 125 AD3d 1086, 1086 [2015]; Matter of Bennett v DiNapoli, 119 AD3d 1310, 1310 [2014]). In order for an incident to constitute an accident within the meaning of the Retirement and Social Security Law, it must be "a sudden, fortuitous mischance, unexpected, out of the ordinary, and injurious in impact" (Matter of Lichtenstein v Board of Trustees of Police Pension Fund of Police Dept. of City of N.Y., Art. II, 57 NY2d 1010, 1012 [1982] [internal quotation marks and citation omitted]; accord Matter of Kenny v DiNapoli, 11 NY3d 873, 874 [2008]).

Respondent adopted the findings and conclusions of the Hearing Officer, who found that slipping on the water "was a sudden, fortuitous mischance and undoubtably unexpected and out of the ordinary." The Hearing Officer denied benefits, however, based solely upon petitioner's failure to demonstrate that the water she had slipped on was not readily observable. In its recent decision in Matter of Kelly v DiNapoli (30 NY3d 674 [2018]), the Court of Appeals stated that "the requirement that a petitioner demonstrate that a condition was not readily observable in order to demonstrate an 'accident' is inconsistent with our prior case law" (id. at 685 n 3). Inasmuch as respondent concluded that – but for the lack of proof that the water was readily observable – the incident satisfied the criteria to constitute an accident within the meaning of the Retirement and Social Security Law, substantial evidence does not support the determination that the incident was not an accident and it must be annulled (see Matter of Starnella v Bratton, 92 NY2d 836, 839 [1998]).

Garry, P.J., Lynch, Clark and Pritzker, JJ., concur.

ADJUDGED that the determination is annulled, without costs, and matter remitted to respondent 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