

Nassau CO Gets Second Disability-Pension Shot Due to Arbiter's Goofs

By MARK TOOR

A Nassau County Correction Officer has been granted a new hearing by a state appeals court on his unsuccessful application for disability retirement for injuries he sustained in a confrontation with an inmate. The appeals court cited "errors of law" on the part of the Hearing Officer who denied him disability.

The officer, Ronald DeMaio, intervened in a fight between an inmate and another officer who was searching him for contraband on March 14, 2011, according to the law firm of McIntyre, Donohue, Accardi, Salmonson and Riordan.

Resistance Caused Injury

Mr. DeMaio subsequently escorted the inmate down a stairwell, holding his arm. The inmate pulled away, causing the CO to injure his lower back.

His initial application was denied by the State Comptroller's Office. He requested a hearing. The Hearing Officer upheld the denial, saying that Mr. DeMaio had failed to show that the inmate had intentionally injured him.

When McIntyre Donohue took the case to the Appellate Division of State Supreme Court, the firm argued that the Hearing Officer had used the wrong legal standard. The firm said Mr. DeMaio needed to prove only that the injury came from "any act of an inmate."

The Appellate Division agreed in its decision March 31 that the Hearing Officer had used the wrong standard.

"There is no legal support

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SEAN RIORDAN: 'Act doesn't have to be intentional.'

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for the Hearing Officer's enhancement of [the burden of proof] by indicating that the petitioner was required to demonstrate 'an intentional overt act of an inmate,' the decision said.

'Intention' Irrelevant

"Despite what many of the Hearing Officers have recently ruled, the 'act of an inmate' that causes the Correction Officer's injury does not need to be an intentional act," Sean Riordan, a partner in the law firm, said in an interview.

In an interview with THE CHIEF-LEADER, Mr. Riordan said that Hearing Officers had been moving away from the theory of an inmate's "benign chore." For example, he said, an application for a disability pension based on an officer slipping on a floor that had been mopped by a prisoner would no longer be acceptable.

The Hearing Officers had been relying on previous appellate decisions, he said, and "this is the first case to say it doesn't have to be an intentional act...If we had to prove the intention of the inmate in every case, the three-quarters disability pension would have no purpose."

Merited New Hearing

The appeals court also found that the Hearing Officer erred when she wrote that her task was to determine whether the decision to deny a disability pension was "supported by substantial evidence." She should have conducted an entirely new hearing, the court said.

"In pension hearings, the Hearing Officer must review the totality of evidence before it and make a new decision, not merely adjudicate whether the prior application decision was supported by substantial evidence," Mr. Riordan said.

The court struck down the determination and ordered a new hearing by the Comptroller's Office.

Mr. Riordan said the court had essentially ruled that Mr. DeMaio was eligible for a disability pension, and he expected the Comptroller's Office would follow that lead.