No. APL-2018-00172

To be argued by:
Victor Paladino
15 minutes requested

State of New York
Court of Appeals

In the Matter of the Application of

PATRICIA WALSH,

Petitioner-Appellant,

v.

NEW YORK STATE COMPTROLLER AND THE NEW YORK STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM,

Respondents.

For a Judgment Pursuant to Article 78
of the Civil Practice Law & Rules.

CORRECTED BRIEF FOR RESPONDENTS

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondent
The Capitol
Albany, New York 12224
(518) 776-2037
(518) 915-7723 (*f*)
William.Storrs@ag.ny.gov

BARBARA D. UNDERWOOD
Solicitor General
ANDREA OSER
Deputy Solicitor General
VICTOR PALADINO
WILLIAM E. STORRS
Assistant Solicitors General
of Counsel

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Third Department No. 525316

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PRELIMINARY STATEMENT

At issue in this appeal is the meaning of the phrase "act of any inmate" in Retirement and Social Security Law § 607-c. This statute authorizes enhanced disability retirement benefits, namely performance-of-duty retirement benefits, for county correction officers who become physically or mentally incapacitated in the performance of their duties by or as the natural and proximate result of an "act of any inmate."

In this case, petitioner Patricia Walsh was injured when an inmate who was barely conscious and unable to control her actions fell from the back of a transportation van. After an administrative hearing, respondent State Comptroller denied petitioner's application for performance-of-duty benefits on finding that the incident did not satisfy the "act of any inmate" requirement, because it did not involve an affirmative act that was volitional or disobedient. Applying its longstanding interpretation of the requirement, the Appellate Division, Third Department, unanimously confirmed. Because the Appellate Division's judgment

reflects a proper interpretation of the statute, and also is supported by substantial evidence, it should be affirmed.

QUESTIONS PRESENTED

1. Does the "act of any inmate" provision in Retirement and Social Security Law § 607-c require an affirmative act that is volitional or disobedient, as the Appellate Division has long construed the phrase.

2. Does substantial evidence support the Comptroller's determination that petitioner's injuries were not the natural and proximate result of the affirmative act of an inmate that was volitional or disobedient?

STATUTORY BACKGROUND

There are two kinds of permanent disability retirement benefits potentially available to correction officers like petitioner: ordinary disability retirement benefits and performance-of-duty disability retirement benefits.

Ordinary disability retirement benefits are the easiest disability retirement benefits to obtain. They are payable to

correction officers who are members of the New York State and Local Employees' Retirement System (the "Retirement System") with at least ten years of service and who become permanently incapacitated. *See* Retirement & Social Security Law ("R.S.S.L.") § 605(b)(1).[1] To be eligible for these benefits, a member need not have been disabled in the performance of duty, and the cause of the disability is not a factor. The amount of the benefits depends on the member's salary and length of service. Nonetheless, the benefits are generally no less than a third of the member's final average salary, and they can be as favorable as a service retirement benefit. *See* R.S.S.L. § 605(d)(2); *see also* R.S.S.L. § 370 (addressing service retirement for members who retire after reaching the minimum retirement age). Although not reflected in the record, we are advised that petitioner qualifies for ordinary disability retirement benefits.

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[1] If the member was incapacitated as the result of an accident sustained in service, the ten-year service requirement does not apply. R.S.S.L. § 605(b)(3).

Performance-of-duty disability retirement benefits are more difficult to obtain. Under R.S.S.L. § 607-c(a), such benefits are available to correction officers:

> who become physically or mentally incapacitated for the performance of duties as the natural and proximate result of an injury, sustained in the performance or discharge of his or her duties by, or as the natural and proximate result of any *act of any inmate*."

R.S.S.L. § 607-c(a) (emphasis added). The statute does not define the phrase "act of any inmate." But the inmate must have been confined in an institution under the jurisdiction of the county, and the county must have elected to provide such benefits. The benefit is the same as the accidental disability retirement benefit provided in R.S.S.L. § 63, which is three-quarters of the member's final average salary. *See* R.S.S.L. §§ 607-c(a), 63(e)(3). Although these benefits are reduced by any benefit payable under the Workers' Compensation Law, *see* R.S.S.L. § 64(a), they are usually more favorable than ordinary disability retirement benefits.

Section 607-c is one of several "act of any inmate" statutes in the Retirement and Social Security Law. *See* R.S.S.L. §§ 63-a, 63-b, 507-b. Though these statutes provide performance-of-duty

disability retirement benefits to different groups or tiers of members in the Retirement System, they all provide benefits based on either "*an* act of any inmate" or "*any* act of any inmate," language that is materially the same. None of these statutes define the phrase, however.

The first two these statutes—R.S.S.L. §§ 63-a and 507-b—were enacted in 1996. They applied to different Retirement System tiers of uniformed personnel in institutions under the jurisdiction of what is now the Department of Corrections and Community Supervision ("DOCCS") and security hospital treatment assistants under the jurisdiction of the Office of Mental Health ("OMH"). For these state employees, the statutes provided enhanced disability retirement benefits for those incapacitated as a proximate result of an "act of any inmate or any person confined in an institution" under the jurisdiction of DOCCS or OMH, and they also created a presumption that an employee who contracted HIV (after exposure to a bodily fluid as the result of an act of any inmate or such confined person), tuberculosis or hepatitis contracted that disease in the performance of duty.

In enacting these statutes, the Legislature cited as justification the strain and tension created by the unprecedented growth in the inmate population of the State's prison system, which was operating at 133 percent of capacity at the time. That explosive growth had "manifested itself in an increase of altercations between inmates and between inmates and officers." New York State Assembly Memorandum in Support of Bill No. A11205, June 20, 1996 (*reprinted in* 1996 McKinney's Session Laws of N.Y. at 2655-56 and reproduced at Pet'r Br. Add. 4). In approving the legislation, the Governor explained that the enhanced benefits were warranted by the fact that the subject employees "must come into daily contact with certain persons who are dangerous, profoundly anti-social, and who pose a serious threat to their health and safety." Gov. Approval Mem. No. 129, L. 1996, ch. 722 (*reprinted in* 1996 McKinney's Session Laws of N.Y. at 1943 and reproduced at Pet'r Br. Add. 5).

In 1999, the Legislature enacted R.S.S.L. §§ 63-b and 607-c, and thereby extended performance-of-duty retirement benefits to different Retirement System tiers of sheriffs, deputy sheriffs, undersheriffs, and correction officers employed by counties that

elected to provide such benefits. *See* L. 1999, ch. 639. Though the phrase "act of any inmate" in the two subsequent statutes is preceded by the word "any," rather than "an," nothing in the legislative history suggests that the Legislature intended to provide materially different benefits. To the contrary, the legislation's sponsor noted that the subject county employees should enjoy the "same benefit" that had earlier been extended to state correction officers and security hospital treatment assistants because they too are "constantly exposed to violence, assault, transmittable disease and other life-threatening situations." *See* New York State Senate Memorandum in Support of Bill No. S3136 (reproduced at Pet'r Br. Add. 20). Because these employees "serve[d] in virtually the same capacity [as state correction officers] and often house state inmates for lengthy periods of time," the proponents reasoned that they should be entitled to the same retirement benefits as their state counterparts. *Id.*; *see also* Budget Report on Bills, Senate No. 3136, par. 4 (summarizing arguments supporting and opposing proposed legislation and reproduced at Pet'r Br. Add. 22-23).

STATEMENT OF THE CASE

A. After the Initial Denial of Petitioner's Application for Performance-of-Duty Benefits, a Hearing Was Convened.

Petitioner Patricia Walsh was a correction officer with the Nassau County Sheriff's Department. She applied for performance-of-duty disability retirement benefits under R.S.S.L. § 607-c, alleging that she was permanently incapacitated as a result of an April 25, 2011 incident involving an "act of any inmate" (94-95).[2] The Retirement System's Director of Disability Services denied petitioner's application on finding that the alleged cause of disability was not a qualifying "act of any inmate," within the meaning of § 607-c (96). Walsh timely requested a hearing and redetermination.

At the hearing, petitioner testified that, on April 25, 2011, she and correction officer Cocchiola were directed to drive the transport van to court to pick up a female inmate who had just been arraigned

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[2] Numerical references in parentheses refer to pages in the Record on Appeal.

(*continued on next page*)

and was causing a disturbance (81).[3] Upon arrival, the officers were advised that the inmate appeared to be intoxicated or high on drugs (81-82), and that fact seemed obvious to petitioner based on her experience (84). Because the inmate could not negotiate the stairs to the garage, petitioner and Cocchiola arranged to use an elevator normally reserved for other purposes to bring the inmate to the garage (82). The inmate did not struggle, but was so unsteady on her feet that she needed help just to walk to the garage and get into the van (82).

On arriving back at the Nassau County Jail, petitioner opened the back of the van and instructed the inmate to exit (83-84). The inmate, who was handcuffed in front, took one step and "took a header out of the van" (84). Petitioner put up her left arm to prevent the inmate from falling, but both she and the inmate fell to the

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[3] Petitioner characterizes the van as the "high-risk van" (*see, e.g.,* Br. at 2), but that characterization finds no support in the record. To the extent petitioner relies on the record from a different case, namely *Matter of Martin v. NYS Comptroller,* 161 A.D.3d 1418 (3d Dep't 2018), which was decided by the Appellate Division during the same term, her reliance is misplaced. When described in this proceeding, the van was either identified by vehicle number or referred to as the "transportation van" (103), "transportation vehicle" (106), or "transportation bus" (115).

pavement, with the inmate landing on top of petitioner (84). Petitioner testified that there was nothing that the inmate stumbled on, and because the inmate was not shackled, this was not a case in which an inmate's shackles had gotten caught on anything (84). Instead, the inmate, who appeared intoxicated and/or high, just "took a header" (84).

Petitioner testified that her top priority as a correction officer was to "keep care, custody and control" over the inmates in her charge, whatever the circumstances might be (84-85). She did not have time to make a decision to protect herself when the inmate fell on top of her (85). Although petitioner struggled to get the inmate off of her after they fell to the ground, that was not because of any resistance on the inmate's part (87). Petitioner also said she did not know whether, after the incident, there was ever an investigation into the inmate's condition (89).

Petitioner's colleague, Officer Cocchiola, similarly testified that, at the courthouse, the inmate was barely able to stand and appeared intoxicated or high on drugs (73). He stated that, when they arrived back at the jail and attempted to get the inmate out of

the van, the inmate initially could not get up from a sitting position (75). Cocchiola noted that petitioner had climbed up into the back of the van to help the inmate get up before climbing back down to the pavement (78).

Cocchiola watched as the inmate stumbled and "just fell out of the van right on top of" petitioner (74, 78). He testified that, as the inmate fell, petitioner attempted to protect the inmate from hitting the ground (75-76). He did not observe the inmate punch or kick petitioner (79). Cocchiola testified that he had seen inmates land on top of officers on other occasions, a scenario that presented a substantial risk of injury to officers (76).

The documentation in the record is consistent with these testimonial accounts. Though the officers were not the only ones who agreed that petitioner *appeared* to be under the influence of alcohol or drugs, there is no evidence establishing that she was, other than petitioner's speculation based on experience. And there was no evidence that the inmate voluntarily caused any such condition.

B. Both the Hearing Officer and the Comptroller Sustained the Denial of Benefits Sought.

The hearing officer recommended the denial of petitioner's application for performance-of-duty disability retirement benefits (36-41). The Comptroller adopted that recommendation, with a few supplemental findings, including that the inmate act that caused petitioner's injury was "involuntary," and thus that petitioner failed to meet her burden of proving that the incident was the result of an "act of any inmate," within the meaning of R.S.S.L. § 607-c (43-45).

The Comptroller found that, as the inmate sought to step off the transit van, she "uncontrollably" slipped and fell on top of Walsh (40). Indeed, given petitioner's knowledge of the inmate's compromised condition (38-39, 40), petitioner's mishap was "more appropriately attributed to her failure to carefully execute her task of removing an inmate from the van" (40). Relying on consistent Appellate Division precedent, the Comptroller reasoned that § 607-c requires an "affirmative" act by the inmate that is volitional or disobedient and that proximately causes injury (44-45). Petitioner's evidence failed to establish such an act here.

C. The Appellate Division Unanimously Confirmed the Comptroller's Determination.

Petitioner commenced this article 78 proceeding to challenge the Comptroller's final determination. Because the petition raised, among other things, a substantial evidence issue, it was transferred to the Appellate Division, Third Department.

The Appellate Division unanimously confirmed the Comptroller's determination as supported by substantial evidence. *See Matter of Walsh v. NYS Comptroller,* 161 A.D.3d 1495 (3d Dep't 2018) (reproduced at 3-4). The court first reviewed the record, noting that the inmate had required assistance to get into the van and then to stand on her feet in the van once back at the local jail. The record also established that the inmate had landed on petitioner after falling forward when attempting to exit the van, but that the inmate had not thereafter attempted to punch or kick petitioner (4).

Though the statute does not define the phrase "act of any inmate," the Appellate Division observed that it had interpreted the phrase to require that the claimed injuries "were caused by direct interaction with an inmate" and "were caused by some affirmative

act on the part of an inmate" (4). The Appellate Division stated that, while an inmate's "affirmative act" did not need to be intentionally aimed at the officer, the act must be "volitional or disobedient in a manner that proximately caused his or her injury" (4).

Applying this interpretation, the Appellate Division acknowledged that there was "no question" that petitioner sustained her claimed injuries while attempting to assist the inmate to exit the van. However, petitioner's injuries did not occur contemporaneously with and flow directly, naturally and proximately from any volitional or disobedient act by the inmate. By all accounts, the inmate could barely walk or stand unassisted and simply lost her footing and fell (5).

Finally, the Appellate Division rejected petitioner's contention that, because her job duties included "insuring inmate safety," the incident should nonetheless be viewed as having been caused by an act of an inmate. The mere fact that petitioner was injured while in the presence of an inmate, or while providing a

service for the inmate's benefit, was in the court's view insufficient to satisfy the statutory requirement (95).

This Court granted petitioner's motion for leave to appeal (1).

ARGUMENT

BECAUSE PETITIONER WAS NOT INJURED BY AN AFFIRMATIVE ACT OF VOLITION OR DISOBEDIENCE, SHE WAS NOT INJURED AS THE RESULT OF AN "ACT OF AN INMATE," WITHIN THE MEANING OF THE STATUTE

Petitioner was injured when an inmate, who was barely conscious and could not stand or walk without assistance, much less negotiate stairs, lost her footing as she stepped off the back of a transport van, fell, and landed on petitioner, who had sought to break the inmate's fall. These facts were amply established by the evidence in the record. And based on these facts, the Appellate Division correctly held that petitioner was not injured as a proximate result of an "act of any inmate," within the meaning of R.S.S.L. § 607-c.

At the administrative hearing, petitioner bore the burden of proving that she was incapacitated as the natural and proximate result of an "act of any inmate." *See Matter of Keller v. Regan*, 212

A.D.2d 856, 857 (3d Dep't 1995). *See generally* State Administrative Procedure Act § 306(1) (party initiating agency proceeding bears the burden of proof). On judicial review, the Comptroller's determination that petitioner failed to carry this burden must be upheld if it is supported by substantial evidence. *Matter of Kelly v. DiNapoli*, 30 N.Y.3d 674, 684 (2018). Substantial evidence is not an exacting standard; it requires only that the record evidence would permit a reasonable factfinder to draw the particular conclusion reached by the administrative agency. *Id.*; *Matter of Ridge Rd. Fire District v. Schiano*, 16 N.Y.3d 494, 499 (2011); *Matter of Haug v. State University of New York at Potsdam*, 32 N.Y.3d 1044 (2018).

A. The Appellate Division Reasonably Construed the "Act of any Inmate" Phrase to Require an Affirmative Act of Volition or Disobedience.

On appeal, petitioner's primary contention is that the Appellate Division construed § 607-c too restrictively by requiring that the correction officer's injury proximately result from an affirmative act of volition or disobedience. Focusing on the statute's potentially broad language, she invites the Court to reject these limitations. The Appellate Division's longstanding construction of

the statute, however, is reasonable and best effectuates the Legislature's intent. That construction should therefore be upheld.

"The primary consideration of courts in interpreting a statute is to 'ascertain and give effect to the intention of the Legislature.'" *Riley v. County of Broome*, 95 N.Y.2d 455, 463 (2000) (quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 92(a) at 177); *see also Lemma v. Nassau County Police Officer Indemnification Bd.*, 31 N.Y.3d 523, 528 (2018) (explaining this principle). Given this overriding goal, this Court routinely consults the statute's legislative history and purpose to ascertain its meaning, even when such language at first blush appears relatively unambiguous. *See Riley v. County of Broome*, 95 N.Y.2d at 463; *Town of Aurora v. Village of E. Aurora*, ___ N.Y.3d ___, 2018 N.Y. LEXIS 3245 at *9 (Nov. 20, 2018).

When a wooden or overly literal interpretation will produce absurd or unreasonable results, this Court construes the statute in a manner that achieves the statute's intended goal. *See, e.g., F.J. Zeronda, Inc. v. Town Bd. of Halfmoon*, 37 N.Y.2d 198, 200-01 (1975) (construing leave-grant authorization in C.P.L.R. 5602(a)(2)

to cover only those cases that "fit within the curative intent" of the statute); *Long v. State of New York*, 7 N.Y.3d 269, 273-75 (2006) (rejecting a literal reading of Unjust Conviction statute that "would impose an impossible condition and create a self-contradicting statute").

The phrase "act of any inmate" is not defined in R.S.S.L. § 607-c or in any other pension statute that uses that phrase. The phrase is reasonably read, however, as the Appellate Division reads it, to mean an affirmative act of volition or disobedience that proximately causes a correction officer's injury.

Reading the statute in this manner furthers the Legislature's purpose. After all, performance-of-duty disability retirement benefits are intended to be the exception to the general rule. Reading the statute more narrowly assures that they remain so.

Reading the statute in this manner is also most consistent with the statute's legislative history. The legislative history of the bill that became R.S.S.L. § 507-b—the statute on which § 607-c was based—establishes that the Legislature intended to address a specific problem, namely a rise in injuries suffered by correction

officers and other government employees at the hands of a dangerous and ever-growing prison population. The Assembly Sponsor of that earlier statute explained that the State's inmate population had "literally exploded" over the last decade, and that the resulting "strain and tension created by this situation has manifested itself in an increase of altercations between inmates and between inmates and correctional officers." New York State Assembly Memorandum in Support of Bill No. A11205, June 20, 1996 (*reprinted in* 1996 McKinney's Session Laws of N.Y. at 2655-56 and reproduced at Pet'r Br. Add. 4). As a result, injuries inflicted by inmates on correction officers and other government employees had become commonplace, often forcing such employees to retire because their injuries prevented them from performing the duties of their job. *Id*. The statute was thus intended to provide enhanced retirement benefits for those employees who became permanently disabled because of the risks created by their "daily contact with certain persons who are dangerous [and] profoundly anti-social." Gov. Approval Mem. No. 129, L. 1996, ch. 722 (*reprinted in* 1996

McKinney's Session Laws of N.Y. at 1943 and reproduced at Pet'r Br. Add. 5).

Petitioner places undue emphasis on the use of the word "any" in the phrase "*any* act of any inmate" (Br. at 19-24) to argue that the language should be read to include even involuntary acts. As we explained, however, *see, supra,* at 4-7, though the statute uses the word "any," rather than "an," as the earlier analogous statutes do, the legislative history demonstrates that the Legislature's intent was to extend the *same benefits* to county employees that those earlier statutes had extended to certain state employees because of the special risks the employees face as a result of an ever-growing dangerous and volatile prison population. Moreover, when the Legislature intended to extend enhanced benefits to employees to account for risks that did not result from affirmative acts of volition or disobedience, it did so expressly by also extending enhanced benefits to employees to account for the risk of exposure to inmates' transmittable diseases.

Petitioner also mistakenly argues (Br. at 24-29) that this inmate's fall from the back of the van is the sort of act that the

Legislature intended the statute to cover because petitioner was executing her duties. As support, petitioner cites (Br. at 26) the memorandum of the Senate's sponsor for the 1999 legislation that extended performance-of-duty disability benefits to county correction officers and mentions that such officers "arrest, detain, transport and house convicted criminals." Bill Jacket, L. 1999, ch. 639 (reproduced at Pet'r Br. Add. 20).

The fact that a correction officer's job duties include transporting inmates, however, does not mean, as petitioner suggests (Br. at 26-27), that all incapacitating injuries occurring during inmate transports necessarily fall within the scope of the statute. Though transporting inmates is undeniably a job duty of a correction officer, it does not follow that the "act of any inmate" requirement is satisfied whenever an officer is incapacitated from an incident that occurs during an inmate transport. The inmate must have committed an "act" that proximately caused the officer's injury.

In view of the statute's purpose and legislative history, the Appellate Division properly interprets the word "act" to mean an

affirmative act of volition or disobedience. As the Appellate Division has explained, the inmate's injury-causing act need not have been intentionally directed at the correction officer. *See Matter of Stevens v. DiNapoli,* 155 A.D.3d 1294, 1295-96 (3d Dep't 2017); *Matter of Laurino v. DiNapoli,* 132 A.D.3d 1057, 1058-1059 (3d Dep't 2015); *Matter of Esposito v. Hevesi,* 30 A.D.3d 667 (3d Dep't 2006). However, it must have been "volitional" and "affirmative."

In fact, *Matter of Laurino* and *Matter of Esposito* are closely analogous to the present case. In *Laurino,* a correction officer was injured while guiding the fall of an inmate who was suffering from a seizure and suddenly went limp. 132 A.D.3d at 1059. In *Esposito,* a correction officer was injured while helping to lift an inmate who, after falling out of bed, needed to be lifted off a stretcher. In both cases, the inmate was essentially a "deadweight," *Esposito,* 30 A.D.3d at 668, who thus had not engaged in any affirmative act of volition or disobedience that proximately caused the officer's injury. As in the present case, the inmates in *Laurino* and *Esposito* acted much like any heavy object that could have injured a worker engaged in physical labor. An injury of that nature is not particular

to correction officers or the unique risks they face on account of the volatility of the prison environment, but rather could be suffered by any number of workers.

The Appellate Division's construction of the "act of any inmate" language has been on the books for well over a decade and has been consistently applied in numerous cases. Yet the Legislature—whose knowledge of judicial construction is presumed—has taken no action to overrule or modify it. Though not dispositive, this legislative inaction provides persuasive evidence that the Legislature has acquiesced in the Appellate Division's interpretation. *See Desrosiers v. Perry Ellis Menswear*, 31 N.Y.3d 488, 497 (2017). *See generally* McKinney's Statutes § 128(a) ("If the practical construction is notorious, the Legislature is charged with knowledge thereof, and its failure to interfere with such construction indicates its acquiescence therein.").

B. Petitioner Was Not Injured as the Proximate Result of an Inmate's Affirmative Act of Volition or Disobedience.

The Third Department also properly found substantial evidence in the record to support the Comptroller's conclusion that

the inmate did not commit an affirmative act of volition or disobedience that proximately caused petitioner's injury. Following arraignment at the courthouse, the inmate could not negotiate the stairs to the garage or, without assistance, walk to or climb into the transportation van (73, 81-82). When the transportation van arrived back at the jail, the inmate could not initially get up on her own (75). Once on her feet, the inmate took, at most, one to one-and one-half steps before she collapsed and fell from the back of the van onto petitioner (74, 78, 84). On this record, the Comptroller found that petitioner failed to meet her burden to prove that an "act of an inmate" proximately caused her injury, a conclusion that the Third Department properly sustained as supported by substantial evidence.

Attempting to show otherwise, petitioner argues (Br. at 29-33), that the inmate's fall was "preceded by volitional acts"—namely, the inmate's act of obeying an order to exit the van by taking one or one-and-a-half steps before falling. Though affirmative acts, those steps were not the proximate cause of petitioner's injuries. It was the inmate's involuntary collapse from

the back of the van that caused those injuries. The inmate's steps were too attenuated from petitioner's injuries to constitute the requisite acts of an inmate that proximately caused petitioner's injury. *See Matter of Palmateer v. DiNapoli,* 117 A.D.3d 1228 (3d Dep't 2014).

Petitioner also argues (Br. at 33-35) that the inmate's fall was preceded by the inmate's volitional affirmative act of becoming intoxicated or high. The Comptroller made no factual finding to support that argument, however.[4] Instead, the Comptroller did no more than assume for purposes of argument that the inmate's condition was the consequence of an earlier voluntary act, and reasoned that any such act would not in any event qualify as an "act of any inmate" that proximately caused petitioner's injury.[5]

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[4] Nor would the Comptroller have been required to make any such finding based on the evidence at the hearing. Those present at the courthouse observed only that the inmate *appeared* to be in that condition. And while petitioner speculated from experience that the inmate was in fact in such a condition, she did not know if prison officials ever investigated the matter. Moreover, there was no evidence that any such condition resulted from voluntary action by the inmate, as opposed to something caused by someone else without the inmate's consent.

[5] Even assuming—without evidence—that the inmate's apparent earlier intoxication was voluntary, that act arguably was not the type of

(*continued on next page*)

Moreover, the Appellate Division correctly sustained that conclusion. As the Comptroller expressly found, the inmate's fall was more appropriately attributed to petitioner's own failure to carefully execute her duties. Petitioner knew that the inmate was so unsteady on her feet that she could not walk without assistance (82). Because the inmate could not negotiate the stairs at the courthouse, petitioner had made special arrangements to use the courthouse elevator to get her to the garage (82). And upon returning to the county jail, the inmate needed assistance just to stand up (75, 77). Yet rather than take sufficient steps to protect the inmate, such as summon a stretcher or carry the inmate from the van, the officers ordered the inmate to step off the back of the van. As the hearing officer aptly observed, given petitioner's

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act that the Legislature contemplated when it provided enhanced pension benefits for disabilities caused by the acts of inmates. As we explained, the Legislature was seeking to address the elevated risk of disability that state and the county personnel faced as a result of the explosive growth of a violent and dangerous prison population and the consequential rise in altercations involving inmates. *See supra,* at 6. This inmate's apparent earlier intoxication involved no such violence or altercation.

knowledge of the inmate's condition, her "mishap is more appropriately attributed to her failure to carefully execute her task of removing an inmate from the van" (40). Thus, the officers' negligence or inattention, not any affirmative or volitional act of the inmate, was the proximate cause of petitioner's injury. *See Matter of Ritsi v. Hevesi,* 15 A.D.3d 832, 832-33 (3d Dep't 2005) (proximate cause of correction officer's slip and fall on AA-battery left on catwalk not the result of inmate's action of throwing subject battery on the catwalk, but rather the failure of officer to perform his assigned duty of sweeping the catwalk earlier in the day).

Finally, there is no merit to petitioner's contention (Br. at 13, 18-19) that the Appellate Division erred when it observed that there was no evidence that the inmate acted disobediently. Contrary to petitioner's suggestions, in making this observation, the Appellate Division did not engraft an additional limitation or qualification onto the statute. Rather, this was simply another way of articulating that the inmate, after falling like a dead weight on petitioner, did not thereafter struggle with petitioner—the

quintessential type of injury-producing risk at the heart of section 607-c benefits.

CONCLUSION

The Appellate Division's judgment should be affirmed.

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August 22, 2019

Respectfully submitted,

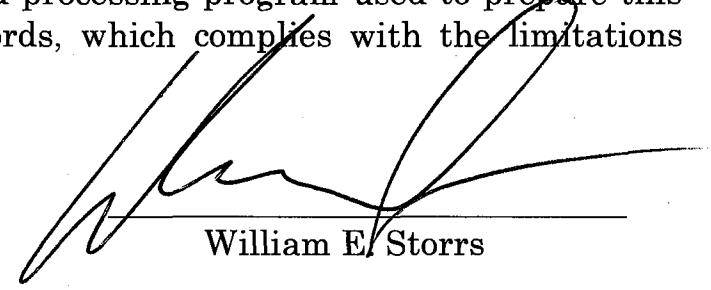
LETITIA JAMES
Attorney General
State of New York
Attorney for Respondents

By: _____
WILLIAM E. STORRS
Assistant Solicitor General
Office of the Attorney General
The Capitol
Albany, New York 12224
(518) 776-2037
William.storrs@ag.ny.gov

BARBARA D. UNDERWOOD
Solicitor General
ANDREA OSER
Deputy Solicitor General
VICTOR PALADINO
WILLIAM E. STORRS
Assistant Solicitors General
of Counsel

AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), William E. Storrs, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains **5,000** words, which complies with the limitations stated in § 500.13(c)(1).



William E. Storrs