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STATE OF NEW YORK
COURT OF APPEALS

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In the Matter of the Application of PATRICIA WALSH,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

- against -

THE NEW YORK STATE COMPTROLLER and THE NEW YORK STATE AND LOCAL POLICE AND FIREFIGHTER'S RETIREMENT SYSTEM,

Respondents.

Third Dep't
Case No. 525316

Albany County
Index No. 2800/17

NOTICE OF MOTION

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SIR/MADAM:

PLEASE TAKE NOTICE that upon the annexed affirmation of Jonathan I. Edelstein dated July 5, 2018, upon the exhibits annexed thereto, and upon all other papers and proceedings heretofore had herein, the petitioner in the above captioned action will move this Court at the Courthouse located at 20 Eagle Street, Albany, NY, on the sixth day of August 2018, at 9:30 a.m. on that day or as soon thereafter as counsel may be heard:

FOR AN ORDER pursuant to Section 5602(a)(1)(i) of the Civil Practice Law and Rules granting leave to appeal to this Court from a Memorandum and Judgment of the Appellate Division, Third Department, issued on May 31, 2018 and served by first-class mail with notice of entry on

June 4, 2018, which confirmed respondents' administrative determination denying performance of duty disability retirement benefits to petitioner,; and granting such other and further relief to petitioner as to this Court may seem just and proper.

Dated: New York, NY
July 5, 2018

JONATHAN I. EDELSTEIN
EDELSTEIN & GROSSMAN
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To: New York State Attorney General
Attorney for Respondents
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STATEMENT OF QUESTIONS PRESENTED

1. Did the Appellate Division err in finding that an "act of an inmate," for purposes of the Retirement and Social Security Law, must be "volitional or disobedient"?

2. Did the Appellate Division err in treating the inmate's intoxication as a factor counting *against* petitioner's injury falling within the scope of the Retirement and Social Security Law?

3. Where an intoxicated inmate falls while attempting to exit a "high risk van" that was used to transport her from the courthouse to the county jail, and where her attempt to exit was the result of a direct order by a correction officer, does the correction officer's resulting injury arise from an "act of an inmate" within the meaning of the Retirement and Social Security Law?

4. Was respondents' determination that petitioner's injury did not result from an act of an inmate unsupported by substantial evidence?

5. Was respondents' determination that petitioner's injury did not result from the act of an inmate arbitrary, capricious and/or not supported by substantial evidence?

6. Was the order of the Appellate Division, Third Department, in all respects properly made?

STATEMENT OF PROCEDURAL HISTORY

1. The underlying Article 78 action (Albany County Index No. 2800/17) was commenced on or about April 24, 2017, and was transferred to the Appellate Division, Third Department, by order dated June 2, 2017.

2. By Memorandum and Judgment dated May 31, 2017, the Appellate Division, Third Department, issued an order confirming the respondents' determination. A copy of the Third Department's decision is annexed as Exhibit A.

3. The aforesaid order was served by first-class mail with notice of entry on June 4, 2018.

4. This motion is filed within thirty-five (35) calendar days from the date of service by first-class mail with notice of entry, and is therefore timely.

JURISDICTIONAL STATEMENT

This Court has jurisdiction of the instant matter because the decision and judgment of the Appellate Division, Third Department, finally disposed of the instant petition by confirming the respondents' administrative determiation.

ARGUMENT

A. Preliminary Statement.

1. The facts of this case are undisputed. On March 19, 2012, petitioner Patricia Walsh, a Nassau County correction officer, was transporting Caitlin Trettien, a large, intoxicated and handcuffed inmate, to the Nassau County Jail in a "high risk van" which had an elevated exit door. When Ms. Walsh arrived at the jail yard and opened the door, Ms. Trettien exited the van at her order, but due to Ms. Trettien's intoxication on alcohol and/or drugs, she fell heavily on top of the petitioner, causing disabling injuries. Notably, at least three other correction officers had previously been injured in the exact same way, i.e., by inmates falling on them while exiting the high risk van.

2. In the papers below, respondents did not dispute this sequence of events. They did not dispute that Ms. Walsh was injured as a result of direct interaction with inmate Trettien nor did they dispute that Ms. Trettien was drunk or high when she exited the van. Nevertheless, they contended, and the Appellate Division found, that Ms. Walsh's injury did not result from an "act of an inmate" within the meaning of Section 607-c of the Retirement and Social Security Law because it was not "disobedient" or a violation of facility rules. Moreover, in making this determination, the Appellate Division not only disregarded Ms. Trettien's intoxicated state but treated such intoxication as a factor cutting *against* petitioner's claim for performance of duty disability benefits.

3. As will be argued in detail below, petitioner submits that the glosses placed on Section 607-c by the Third Department, namely that an injury must result from a "disobedient" act to be compensable and that intoxication cuts against inmates' acts being volitional – is consistent with neither the language nor the protective purpose of the statute, and rests upon an excessively narrow view of its legislative history. This Court should therefore grant leave to appeal and, upon

appellate review, find that Ms. Walsh's injury does fall within the class of incidents protected by the Retirement and Social Security Law.

B. Relevant Facts and Procedural History.

4. As testified to by Ms. Walsh at the benefit hearing, on March 19, 2012, she was a correction corporal in Nassau County. (R.77).[1] She and Officer Cocchiola were sent to pick up a female inmate (later identified as Catlin Trettien) who was causing a problem in arraignment court. (R.78). She proceeded to the courthouse and learned that Ms. Trettien appeared to be intoxicated or high on drugs. (R.78-79). She then escorted Ms. Trettien to the van, noting that Ms. Trettien was unsteady on her feet and needed help walking. (R.79). At this time Ms. Trettien was handcuffed in the front. (R.80).

5. Ms. Walsh described the van as opening in the back and having two steps up to the entrance, one of which was an extension off the bumper and then another step. (R.79, 84). After getting Ms. Trettien into the van, she drove back to the Nassau County Jail. (R.80). She opened the back door and instructed Ms. Trettien to exit the van. (R.81). Again, she noted that Ms. Trettien was intoxicated or under the influence of drugs. (R.81).

6. Ms. Trettien was standing on the right side from the point of view of a person facing the van, and Ms. Walsh was standing directly in front of her. (R.84).

7. At that point, Ms. Trettien took approximately two steps and "took a header out of the van" due to her intoxicated state. (R.81, 85). Ms. Walsh put out her left arm to try to prevent Ms. Trettien from falling, "at which point we both went down onto the pavement and she landed on top of me." (R.81). Ms. Walsh took this action pursuant to her job duty to protect falling inmates

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[1] Citations to "R." refer to the record on review before the Third Department.

even at the risk of injury to herself. (R.81-82).

8. The inmate did not punch or kick Ms. Walsh. (R.85-85a).

9. As a result of this incident, Ms. Walsh suffered inter alia a torn rotator cuff and cervical spine injury which required four-level fusion surgery. (R.82). She is on the disabled list (R.82-83), as corroborated by a medical report prepared by the Nassau Sheriff's Department Chief Surgeon's Office (R.108-09).

10. Officer Cocchiola gave testimony corroborating Ms. Walsh's account. He testified that on the date in question, he was working in the transportation section of the jail and that he and Ms. Walsh were sent to pick up an inmate who was being unruly in court. (R.68-69). He observed the prisoner "barely standing," like she was "intoxicated or high on drugs." (R.70). The inmate was "fairly big," weighing 190 to 200 pounds. (R.70).

11. Both officers helped the inmate, Ms. Trettien, into the van and drove back to the main yard of the jail. (R.70-71). The officers opened the back of the van, whereupon Ms. Trettien fell right on top of Ms. Walsh. (R.71). The inmate had had difficulty getting up before taking a step out of the van. (R.72) She was "a little out of it." (R.75). She took one and a half steps before falling. (R.75).

12. Officer Cocchiola confirmed that it is required for a correction officer to put her body in the way of a falling inmate. (R.73).

13. A number of contemporaneous incident reports were prepared after the accident, both by Ms. Walsh and other officers. (R.92-107). These reports corroborate the testimony of petitioner Walsh and Officer Cocchiola in every respect. The reports specifically noted that Ms. Trettien was under the influence of drugs or alcohol and that she "lunged forward" when exiting the high risk

vehicle. (R.99).

14. Thereafter, petitioner applied for benefits under Section 607-c of the Retirement and Social Security Law (R.87-88), and a hearing was held thereon (R.59-86).

15. Both parties submitted memoranda of law following the hearing. (R.21-24, 26-32). Petitioner contended that her injury resulted from the inmate's acts of getting drunk or high and stepping out of the van, noting that under applicable case law, the inmate need not intend to cause injury. (R.24-25). In particular, Ms. Walsh argued that under DeMaio v. DiNapoli, 137 A.D.3d 1545 (3d Dept. 2016), an act of an inmate need not be intentional in order to qualify an officer injured by such act for disability retirement benefits.

16. Respondents, in contrast, argued that the instant case was similar to Kaler v. DiNapoli, 86 A.D.3d 898 (3d Dept. 2011), in which a correction officer slipped on a floor that inmates had mopped some time before, and Laurino v. DiNapoli, 132 A.D.3d 1057 (3d Dept. 2015), in which an inmate went limp during a seizure and injured a correction officer. (R.29-32).

17. On December 1, 2016, JHO Arthur Cooperman issued a decision on Ms. Walsh's application. (R.34-39). In pertinent part, JHO Cooperman found that the Laurino decision was controlling and mandated denial of benefits. (R.37). Notably, the JHO made no attempt to differentiate the DeMaio case. (R.37). On this basis, JHO Cooperman found that petitioner Walsh had not sustained her burden of proof as to whether she was injured as the result of an act of an inmate. (R.37).

18. By decision dated January 8, 2017, the Comptroller adopted JHO Cooperman's decision and denied Section 607-C benefits to Ms. Walsh. (R.41-42). The Comptroller's decision additionally differentiated DeMaio, supra, on the ground that inmate Trettien's act in this case was

allegedly "involuntary." (R.42).

19. The January 8, 2017 decision exhausted Ms. Walsh's administrative remedies, and accordingly, she timely sought Article 78 relief in the Albany County Supreme Court (R.4-19), to which respondents interposed an answer (R.54-58). On June 2, 2017, the Supreme Court transferred the petition to the Appellate Division, Third Department, pursuant to CPLR § 7804(g). (R.1-3). Both parties thereafter filed briefs in the Appellate Division, copies of which are submitted herewith.

20. On May 31, 2018, the Third Department issued a Memorandum and Judgment confirming the respondents' determination. See Exhibit A. In pertinent part, the court stated:

> Petitioner, as the applicant, bore the burden of demonstrating that her alleged incapacity was the natural and proximate result of any act of any inmate. The phrase any act of any inmate is not statutorily defined... but we have interpreted this language to require a showing that the claimed injuries were caused by direct interaction with an inmate and, further, were caused by some affirmative act on the part of the inmate. An "affirmative act" need not be intentionally aimed at the officer, ***but does need to be volitional or disobedient in a manner that proximately causes his or her injury.***
>
> Here, there is no question that petitioner sustained her claimed injuries when attempting to assist the subject inmate in exiting the transport van, i.e., through direct interaction with an inmate. Petitioner's injuries did not, however, occur contemporaneously with, and flow directly, naturally and proximate from any disobedient and affirmative act on the part of the inmate. ***Indeed, by all accounts, the inmate in question could barely walk or stand unassisted***, and the hearing testimony reflects that she simply lost her footing and fell. While petitioner makes much of the fact that her job duties included insuring the subject inmate's safety, the mere fact that petitioner was injured while she was... engaged in providing a service for the benefit of an inmate, is insufficient, without more, to satisfy the statutory standard.

Id. at 2-3 (emphasis added) (citations and internal punctuation omitted).

21. The Third Department's decision in this case came two weeks after its decision in

Martin v. Comptroller, 161 A.D.3d 1418 (3d Dept. 2018), which involved another Nassau County correction officer who was injured when a different inmate fell out of the same high-risk van. The Martin decision, too, denied benefits on the basis that there was no "indication that the inmate, upon exiting the van, disobeyed a direct order, failed to comply with any policy or procedure or otherwise engaged in any sort of affirmative act that, in turn, proximately caused petitioner's injuries."

22. The decision in this case, in combination with Martin, is remarkable in two respects. First, although previous decisions had *mentioned* that certain acts of inmates were disobedient or violated prison rules, no court prior to Martin and the instant case had suggested that an act *must* be disobedient in order to fall within the scope of the Retirement and Social Security Law. Second, and just as importantly, no decision prior to the decision in this case had ever suggested that an inmate's voluntary intoxication *detracted* from the compensability of an injury by making the inmate's resulting acts less "volitional."

23. The Appellate Division's decision was served by first-class mail with notice of entry on June 4, 2018, see Exhibit A, and petitioner now moves for leave to appeal to this Court on all issues raised before the courts below.

C. Argument.

24. Section 607-c(a) of the Retirement and Social Security Law states in pertinent part that a county correction officer "who becomes 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 or any person confined in an institution under the jurisdiction of such county, shall be paid a performance of duty disability retirement allowance equal to that which is provided in section

sixty-three of this chapter."

25. The language of Section 607-c mirrors that of R&SSL § 507-b, which was earlier enacted to provide similar benefits to New York State correctional officers.

26. The terms of Section 607-c have been held to require "that a correction officer's injuries be caused by direct interaction with an inmate," i.e., that such interaction result in the act that causes injury. Escalera v. Hevesi, 9 A.D.3d 666, 667 (3d Dept. 2004). The meaning of "act" itself, however, is not defined in either statute.

27. In Kaler v. DiNapoli, 86 A.D.3d 898, 899 (3d Dept. 2011), which has become the leading Third Department case on the meaning of "any act of any inmate," the Appellate Division attempted to define this term by reference to legislative history. Citing the Governor's memorandum approving R&SSL § 507-b, the Third Department found that the purpose of Sections 507-b and 607-c "was clearly intended to compensate correction officers who, because of the risks created by their daily contact with certain persons who are dangerous and profoundly antisocial." Id.

28. Notably, however, the Kaler court's citation of the Governor's memorandum was incomplete. The then-Governor in fact justified the bill as follows:

> Correction officers and security hospital treatment assistants work in an environment where they 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. When a member sustains a debilitating injury ***while executing his or her duties*** we must provide them with the means to take care of themselves and family.

See Bill Jacket, Chapter 722 of the Laws of 1996, at 5 (emphasis added). In other words, while the Governor did mention that inmates were dangerous and antisocial, he also spoke more broadly of the need to compensate all correction officers who were disabled "while executing [their] duties."

29. The legislative history of Chapter 639 of the Laws of 1999, which expanded performance of duty disability benefits from state to county correction officers, is also instructive. The "justification" provided for this bill by its introducer, Senator Leibell, stated *inter alia* as follows:

> Whether preforming front line law enforcement or guarding prisoners in county jails these employees are constantly exposed to violence, assault, transmissible disease ***and other life threatening situations***. These employees arrest, detain, ***transport*** and house convicted criminals... in a setting that necessitates a strong disability protection in the event of a career ending injury.

See Bill Jacket, Chapter 639 of the Laws of 1999, at 4 (emphasis added); see also id. at 5 (letter of Assembly Member Vitaliano). Again, this justification is not limited to acts of violence and specifically includes injuries sustained while "transporting" prisoners.

30. Notably, another memorandum submitted in support of the bill indicated that correction officers "face similar risks to those faced by police officers," indicating that the bill should cover injuries resulting from such risks. See id. at 15 (memorandum of the Metropolitan Police Conference of New York State).

31. Petitioner thus respectfully submits that the focus of the Kaler court and its progeny on the "dangerous [and] profoundly anti-social" language in the Governor's memorandum, and the Third Department's consequent holding in this case and Martin that an "act of an inmate" must be disobedient or a rule violation, was too narrow an interpretation of the statute's purpose. Instead, as noted above, the statute has the broad remedial purpose of compensating correction officers who are disabled "while executing [their] duties," and that such duties (a) specifically include "transporting" inmates, and (b) pose risks equivalent to those faced by police officers, who also

transport prisoners.

32. Indeed, the statutory language itself – "*any* act of any inmate" (emphasis added) – imports a broad construction rather than one that is restricted to disobedient or violent acts.

33. Accordingly, while the Third Department correctly decided DeMaio, supra, where it found that an act of an inmate need not be intentional, it was not correct when it further narrowed the scope of the statute to require that acts be disobedient, rule violations and/or volitional.

34. Therefore, under a correct interpretation of the statute, Ms. Walsh's injury resulted from a sufficient "act of an inmate." The inmate, Ms. Trettien, engaged in an affirmative act by stepping down a steep step from the top of the vehicle bumper. The act did not end in the way the inmate intended, but that does not make it any less an act. Moreover, Ms. Trettien's fall cannot be separated from her underlying act of exiting the van, any more than an automobile crash can be separated from the underlying act of driving a car.

35. Moreover, petitioner submits that, under a correct interpretation of the statute, it was a further error for the Third Department to treat Ms. Trettien's intoxication as a factor that made her act less "volitional." This is a dangerous precedent for officers who must deal with inmates who are high on alcohol or drugs – indeed, getting high in a correctional setting is one of the "dangerous [and] anti-social" traits of inmates with which the Governor recognized that correction officers must contend.

36. If the Third Department's decision is allowed to stand, then officers who are injured by inmates who are drunk – and therefore more dangerous than sober ones – will risk being denied disability benefits because the court will view the inmate's drunkenness as a mitigating factor rather than as the hazard of employment that it is. The Third Department's myopic focus on the

"volitional" nature of the act leaves a gaping hole in the statute's protective scheme where officers are injured by inmates who become illicitly drunk or high.[2]

37. The risk and injury in this case flowed precisely from "profoundly antisocial" nature of inmates. Ms. Walsh was driving the high-risk van, and the reason for the high security of that van was that it was transporting inmates who had a known propensity for antisocial behavior. This includes the inmate here, who was being unruly due to being drunk or high. Had the inmate not been antisocial, Ms. Walsh would not have been required to transport and interact with her in such a high risk manner, and her act of stepping down from the van would likely not have resulted in a fall.

38. In sum, and simply put, transporting inmates is one of a correction officer's duty and falling is a recognized risk of an inmate stepping down from a vehicle. Moreover, it is a recognized risk that inmates might become intoxicated and unruly and that such acts might result in injury to officers. Thus, the injury suffered here is precisely the kind that can naturally flow from the inmate's affirmative act of stepping down. Moreover, it is precisely this risk that correction officers are required to protect inmates against, and Ms. Walsh was injured because she did her duty to protect the inmate from this danger.

39. Indeed, the fact that Ms. Walsh's injury resulted from a risk common to the correctional setting is highlighted by the fact that at least three other correction officers have been injured in precisely the same way. The Martin case, supra, involved an officer who was injured

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[2] The fact that Ms. Trettien was drunk or high also differentiates this case from Laurino v. DiNapoli, 132 A.D.3d 1057 (3d Dept. 2015) and Esposito v. Hevesi, 30 A.D.3d 667 (2006), upon which both respondents and the Third Department relied. In both Laurino and Esposito, the inmate suffered a medical emergency that did not result from any conduct on his or her part, whereas in this case, Ms. Trettien's poor balance resulted from her voluntary intoxication. In any event, as discussed above, petitioner submits that the Third Department's focus on the "volitional" nature of an inmate's act is misguided and that Laurino and Esposito were thus wrongly decided.

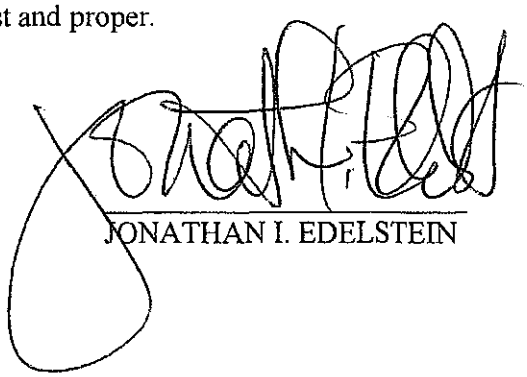
when an inmate fell on him from the high-risk van, and during the administrative proceedings in this case, reference was made to two prior officers, Beattie and Hood, who were hurt in the same fashion. Clearly, the features of the high-risk vehicle, which are peculiar to the correctional setting and which are designed precisely to control the antisocial tendencies of inmates which motivated the Legislature to enact Section 607-c, contributed to the injury here and should bring such injury within the scope of the statute.

40. The duties of correction officers are care, custody and control of inmates, and the first and most important of those duties is *care*. Ms. Walsh was injured caring for an inmate, and when care of inmates - the highest duty of correction officers - is implicated by the inmates' actions, officers should not be debarred from receiving the benefits due to them for any resulting injuries. This Court should therefore grant leave to appeal from the Third Department's decision and, upon review, find that Ms. Walsh is entitled to performance of duty disability retirement benefits.

CONCLUSION

WHEREFORE, plaintiffs respectfully request that this Court issue an order granting leave to petitioner to appeal to this Court on all issues raised before the Third Department, and granting such other and further relief to plaintiffs as it may deem just and proper.

Dated: New York, NY
July 5, 2018



JONATHAN I. EDELSTEIN

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD DEPARTMENT

In the Matter of PATRICIA WALSH,

Petitioner,

v.

NOTICE OF ENTRY

NEW YORK STATE COMPTROLLER, et al.,

Respondents.

A.D. No. 525316
OAG No. 17-221342

PLEASE TAKE NOTICE that the within is a true and complete copy of the **MEMORANDUM AND JUDGMENT** duly entered in the above-entitled matter in the Office of the Clerk of the Supreme Court, Appellate Division, Third Department on May 31, 2018.

Dated: Albany, New York
June 7, 2018

BARBARA D. UNDERWOOD
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State of New York
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By: _____
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State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 31, 2018 525316

In the Matter of PATRICIA WALSH,
Petitioner,
v MEMORANDUM AND JUDGMENT

NEW YORK STATE COMPTROLLER et al.,
Respondents.

Calendar Date: April 24, 2018

Before: Lynch, J.P., Devine, Mulvey, Aarons and Pritzker, JJ.

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

Barbara D. Underwood, Attorney General, Albany (William E. Storrs of counsel), for respondents.

Devine, J.

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 application for performance of duty disability retirement benefits.

Petitioner, a county correction officer, applied for performance of duty disability retirement benefits (see Retirement and Social Security Law § 607-c) contending that she was permanently disabled due to injuries sustained in March 2012 when the intoxicated inmate that she was transporting stumbled and fell on her. Her application was denied on the ground that

her alleged disability "was not the result of an act of any inmate." Following a hearing and redetermination, the Hearing Officer agreed and recommended upholding the denial. Respondent Comptroller accepted the Hearing Officer's decision with supplemental conclusions of law, and this CPLR article 78 proceeding ensued.

The underlying facts are not in dispute. Petitioner and another correction officer were dispatched to a local courthouse to pick up an unruly inmate, who was either "intoxicated or high on drugs." The inmate was handcuffed and was sufficiently impaired that she could not walk up stairs and needed assistance to navigate the two steps leading into the back of the transport van. When the trio arrived at the local jail, the inmate was unable to stand on her own and required petitioner's assistance to get on her feet. The inmate attempted to exit the transport van on her own, at which point she fell forward and landed on petitioner, who was trying to break the inmate's fall. The inmate thereafter struggled to get off of petitioner but made no attempt to punch or kick petitioner.

Petitioner, as the applicant, bore the burden of demonstrating that her alleged incapacity "was 'the natural and proximate result of any act of any inmate'" (Matter of White v DiNapoli, 153 AD3d 1080, 1081 [2017], quoting Retirement and Social Security Law § 607-c [a]; see Matter of Traxler v DiNapoli, 139 AD3d 1314, 1314 [2016]). The phrase "any act of any inmate" is not statutorily defined (Retirement and Social Security Law § 607-c [a]), but we have interpreted this language to require a showing that the claimed injuries "were caused by direct interaction with an inmate" and, further, were "caused by some affirmative act on the part of the inmate" (Matter of DeMaio v DiNapoli, 137 AD3d 1545, 1546 [2016] [internal quotation marks and citations omitted]; accord Matter of Stevens v DiNapoli, 155 AD3d 1294, 1295 [2017]; see Matter of Traxler v DiNapoli, 139 AD3d at 1315). An "affirmative act" need not be intentionally aimed at the officer (see Matter of DeMaio v DiNapoli, 137 AD3d at 1546), but does need to be volitional or disobedient in a manner that proximately causes his or her injury (see Matter of Stevens v DiNapoli, 155 AD3d at 1295-1296; Matter of Traxler v DiNapoli, 139 AD3d at 1315; Matter of Laurino v DiNapoli, 132

AD3d 1057, 1058-1059 [2015]; Matter of Esposito v Hevesi, 30 AD3d 667, 668 [2006]).

Here, there is no question that petitioner sustained her claimed injuries while attempting to assist the subject inmate in exiting the transport van, i.e., through direct interaction with an inmate. Petitioner's injuries did not, however, "occur[] contemporaneously with, and flow[] directly, naturally and proximately from, . . . [any] disobedient and affirmative act" on the part of the inmate (Matter of Traxler v DiNapoli, 139 AD3d at 1315 [internal quotation marks and citation omitted]; see Matter of Stevens v DiNapoli, 155 AD3d at 1295-1296). Indeed, by all accounts, the inmate in question could barely walk or stand unassisted (cf. Matter of Laurino v DiNapoli, 132 AD3d at 1058-1059; Matter of Esposito v Hevesi, 30 AD3d at 668), and the hearing testimony reflects that she simply lost her footing and fell (see Matter of Stevens v DiNapoli, 155 AD3d at 1295-1296). While petitioner makes much of the fact that her job duties included insuring the subject inmate's safety, "[t]he mere fact that . . . petitioner was injured while she was in the presence of an inmate, or while she was engaged in providing a service for the benefit of an inmate, is insufficient, without more, to satisfy the statutory standard" (Matter of Hernandez v New York City Employees' Retirement Sys., 148 AD3d 706, 708 [2017]). Petitioner's remaining contentions, including her assertion that the Comptroller engaged in an unexplained departure from prior precedent, have been examined and found to be lacking in merit. Accordingly, the determination is confirmed.

Lynch, J.P., Mulvey, Aarons and Pritzker, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

Robert D Mayberger

Robert D. Mayberger
Clerk of the Court