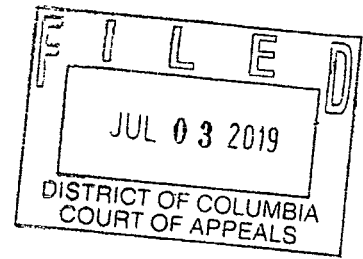


**District of Columbia
Court of Appeals**



No. 19-AA-293

NICOLE RENA MCCREA,
Petitioner,

v.

FD18-2105

DISTRICT OF COLUMBIA
POLICE & FIREFIGHTERS'
RETIREMENT & RELIEF BOARD,
Respondent.

BEFORE: Fisher, Thompson, and Easterly, Associate Judges.

A M E N D E D O R D E R

On further consideration of this court's May 21, 2019, order directing respondent to address, *inter alia*, whether the orders on review arose in a contested case; respondent's response; petitioner's motion for leave to file her lodged reply thereto; and the petition for review; it is

ORDERED that petitioner's motion for leave is granted and the Clerk shall file the lodged reply. It is

FURTHER ORDERED that the petition for review is dismissed for a lack of jurisdiction. *See* D.C. Code § 2-510(a) (2016 Repl.) (authorizing direct review of an agency order or decision in this court only in a "contested case"). Although petitioner's original retirement/annuity proceeding under D.C. Code § 5-721(a) (2012 Repl.) was a "contested case" that this court reviewed directly, *see McCrea v. District of Columbia Police & Firefighters' Ret. & Relief Bd.*, 199 A.3d 208 (D.C. 2019), no statute or regulation entitles her to a trial-type hearing to dispute the adequacy of the annual medical examination required by D.C. Code § 5-721(b) and implemented in 7 DCMR § 2519, nor can we discern any constitutional right to one. *See R.O. v. Dep't of Youth Rehab. Servs.*, 199 A.3d 1160, 1164 (D.C. 2019) (specifying that a "contested case" involves a trial-type hearing required by the agency's enabling statute, implementing regulations, or constitutional right); *Mathis v. District of Columbia Hous. Auth.*, 124 A.3d 1089, 1099 (D.C. 2015) (describing

APPENDIX A

No. 19-AA-293

the features of a trial-type hearing to include representation by counsel, cross-examination of adverse witnesses, fact-finding by an impartial adjudicator, pre-hearing discovery, and opening and closing arguments); *Farrell v. District of Columbia Police & Firefighters Ret. & Relief Bd.*, 151 A.3d 490, 495 (D.C. 2017) (finding that the rights to notice of any hearing held before respondent, to personally appear at such a hearing, to representation by counsel, to submit materials for respondent to consider, and to a written decision by respondent nevertheless fell short of the “full panoply of trial-type procedural rights” to qualify an application for survivor benefits as a “contested case”). This dismissal is without prejudice to petitioner seeking appropriate relief. *See District of Columbia v. Sierra Club*, 670 A.2d 354, 359 (D.C. 1996) (“[A]ny party aggrieved by an agency’s decision may initiate an appropriate equitable action in the Superior Court to seek redress.”).

PER CURIAM

Copy mailed to:

Nicole Rena McCrea
5205 East Capitol Street, SE
Washington, DC 20019

Copy e-served to:

Loren L. AliKhan, Esquire
Solicitor General for DC

cml

**District of Columbia
Court of Appeals**

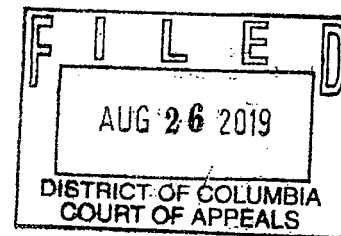
No. 19-AA-293

NICOLE RENA MCCREA,

Petitioner,

v.

FD18-2105



DISTRICT OF COLUMBIA
POLICE & FIREFIGHTERS'
RETIREMENT AND RELIEF BOARD,

Respondent.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, * Thompson, *
Beckwith, Easterly, * and McLeese, Associate Judges.

ORDER

On consideration of petitioner's petition for rehearing or rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Copies to:

Honorable Jeremy Grey

Nicole Rena McCrea
5205 East Capitol Street, SE
Washington, DC 20019

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Loren L. AliKhan, Esquire
Solicitor General for DC

pii

APPENDIX C



Government of the District of Columbia
Police and Firefighters' Retirement and Relief Board

CERTIFICATE OF COMPLIANCE

In the matter of:

NICOLE MCCREA
Annuitant

*D.C. Fire and Emergency Medical Services
Department
Case No. FD18-2105*

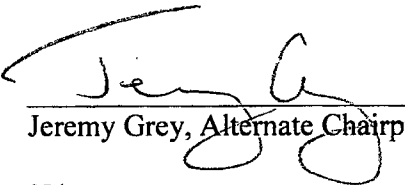
Annual Review

On January 8, 2019, the Police and Fire Clinic (PFC) issued a medical evaluation report relating to this Annuitant. The PFC reports that the Annuitant has not fulfilled the annual evaluation requirements set forth at D.C. Official Code § 5-721(b)(2) because the Annuitant did not complete the requirement to undergo a medical evaluation in calendar year 2018.

This Board finds that the annuitant did not satisfy her requirement to undergo an annual medical review for calendar year 2018. However, given the low likelihood of recovery based on previous examinations, this Board will take no further action relating to her failure to undergo her 2018 annual medical examination. Therefore, it is this date, **Thursday, January 17, 2019**,

ORDERED:

1. The show cause order is **DISMISSED**;
2. The hearing scheduled for January 24, 2019 is **VACATED**;
3. The annuitant is **EXCUSED** from further annual medical reviews; and
4. The clerk shall serve the Annuitant a copy of this certificate.



Jeremy Grey, Alternate Chairperson

JG/ac

Certificate of Service Attached

APPENDIX E



Government of the District of Columbia
Police and Firefighters' Retirement and Relief Board

ORDER

In the matter of:

NICOLE MCCREA
Annuitant

*D.C. Fire and Emergency Medical Services
Department
Case No. FD18-2105*

Disability

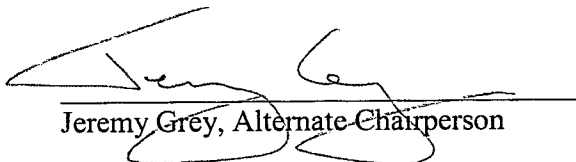
On February 4, 2019, Annuitant Nicole McCrea, a former member of the D.C. Fire and Emergency Medical Services Department, filed a petition for reconsideration with this Board. In her petition, Annuitant McCrea objected to this Board's order retiring her on disability effective May 15, 2015. She also objected to this Board's January 17, 2019 order excusing her from undergoing further annual medical reviews, arguing that it deprived her of her right to demonstrate to this Board that she has recovered from her disability.

This Board reviewed Annuitant McCrea's petition for reconsideration in executive session on February 14, 2019, pursuant to 7 DCMR §§ 2525.1-2527.2. Regarding Annuitant's McCrea's objection to her retirement on disability, Annuitant McCrea had 15 business days to seek reconsideration of this Board's May 15, 2015 order pursuant to 7 DCMR 2525.1. Instead, Annuitant McCrea exercised her right to appeal the order directly to the District of Columbia Court of Appeals, which on January 3, 2019, affirmed this Board's decision to retire her on disability.¹ This Board therefore concludes that Annuitant McCrea's argument that she should not have been retired on disability is untimely.

Regarding Annuitant's McCrea's argument that this Board's January 24, 2019, order deprived her of her right to demonstrate that she has recovered from disability, that order solely relieved her of the statutory requirement to undergo an annual examination pursuant to D.C. Code § 5-721(b)(2) on penalty of loss of her annuity. If Annuitant McCrea has medical evidence to show that she has recovered from the condition for which she was retired on disability, she may present the evidence to this Board, at any time prior to reaching the age of 50, pursuant to D.C. Code § 5-714. Therefore, it is, this date, March 7, 2019,

ORDERED:

Annuitant McCrea's petition for reconsideration is **Denied**.



Jeremy Grey, Alternate Chairperson

JG/jg
Certificate of Service Attached

¹ *McCrea v. PFRRB*, 19 A.3d 208 (D.C. 2019).

APPENDIX B