

**NEW YORK STATE AND LOCAL RETIREMENT SYSTEM**

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In the Matter of the Application

of

H.C. No.: 20150013  
EMPL ID: R11226637

Pursuant to Section 374 of the Retirement and Social Security Law  
for a Hearing and Redetermination

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This document constitutes the final determination of the Executive Deputy Comptroller pursuant to designation by the State Comptroller.

Hearings having been held in Syracuse, New York, on December 16, 2015, on April 12, 2016, and on September 21, 2016, with the HONORABLE PETER WELLS, and with the HONORABLE PATRICIA MARKS, presiding as Hearing Officers, and in Albany, New York, on February 1, 2017, with the HONORABLE MICHAEL C. EIDENS, presiding as Hearing Officer, with the applicant, having appeared in person, and by THE LAW OFFICES OF THOMAS J. JORDAN, ESQ., her Counsel, and the NEW YORK STATE & LOCAL RETIREMENT SYSTEM, having appeared by ROBERT COUGHLIN, ESQ., Counsel, JOSEPH McCANN, ESQ., of Counsel, and the HONORABLE MICHAEL C. EIDENS having rendered the decision, and all the evidence taken and introduced having been read and considered,

NOW, after due deliberation, the Executive Deputy Comptroller of the New York State and Local Retirement System accepts the Findings and Conclusions of the Hearing Officer as attached.

**IT IS DETERMINED AND DIRECTED** that the application of  
for STATE POLICE DISABILITY RETIREMENT benefits is APPROVED.

**IT IS DETERMINED AND DIRECTED** that the application of  
for ACCIDENTAL DISABILITY RETIREMENT benefits is DENIED.

Dated at Albany, New York, this *22nd* day of June 2017

By

  
Colleen Gardner  
Executive Deputy Comptroller

New York State and Local Retirement System

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In the Matter of the Application of

Reg. # 0A919795  
HC # 20150013

Pursuant to Section 74 or 374 of the Retirement and  
Social Security Law for a Hearing and Re-determination

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A hearing was held in the above entitled matter on December 16, 2015 in Syracuse, New York before the Hon. Peter Wells, presiding as Hearing Officer, and the applicant having appeared personally and with counsel Thomas Jordan, Esq., by videoconference from Albany, New York, and the New York State and Local Retirement System appearing via videoconference from Albany, New York by Robert Coughlin, Esq., its counsel, Joseph McCann, Esq., of Counsel.

A second hearing was held on April 12, 2016 in Syracuse, New York, before the Hon. Patricia Marks presiding as Hearing Officer, with the applicant appearing personally and with counsel Thomas Jordan, Esq., by videoconference from Albany, New York, and the New York State and Local Retirement System appearing via videoconference from Albany, New York by Robert Coughlin, Esq., its counsel, Joseph McCann Esq., of Counsel.

A third hearing was held on September 21, 2016 in Syracuse, New York, before the Hon. Peter Wells presiding as Hearing Officer, with the applicant appearing by videoconference from Albany, New York with counsel Thomas Jordan, Esq., and the New York State and Local Retirement System appearing via videoconference from Albany, New York by Robert Coughlin, Esq., its counsel, Joseph McCann, Esq., of Counsel.

A fourth hearing was held on February 1, 2017 in Albany, New York, before the Hon. Michael C. Eidens presiding as Hearing Officer, with the applicant appearing personally and with counsel Thomas Jordan, Esq., and the New York State and Local Retirement System appearing by Robert Coughlin, Esq., its counsel, Joseph McCann, Esq., of Counsel.

The issues to be determined with respect to the Application for Tier 1&2 Accidental Disability Retirement are (1) whether the applicant is permanently incapacitated from performing her job duties, and if so, (2) whether the incident of April 8, 2011 constitutes an accident within the meaning of the RSSL, and (3) whether her disability was caused by an accident sustained in the service upon which her membership is based.

The issue with respect to the Application for State Police Disability Retirement is whether the applicant is permanently incapacitated from performing her job duties.

References to T1 followed by a number are to the transcript page of the hearing held on December 16, 2015; to T2 to the hearing held on April 12, 2016; to T3 to the

hearing held on September 21, 2016; and to T4 to the hearing held on February 1, 2017.

Now, all of the proofs having been read and all of the evidence having been taken and introduced and having been read and considered, and the Retirement System and the applicant having each submitted a Memorandum of Law dated May 1 2017, the undersigned Hearing Officer finds as follows:

### FINDINGS OF FACT

1. Applicant was employed by the New York State Police as a trooper for approximately thirteen years (T3, p 6). The job description of a State Trooper is in evidence (System Exhibit #5, p 35, 36) and includes physical requirements that she be able to quickly enter or exit a vehicle, restrain or arrest persons, defend herself or others, be capable of foot pursuit of fleeing suspects, be capable of lifting, carrying or dragging objects, be capable of climbing a hill, fence or wall, and related tasks (System Exhibit #5, p 35).
2. As part of her work duties, applicant testified that her job was "pretty physical" and that she was expected to arrest criminals and "This can be anything from hand cuffing them to physically detaining them. Sometimes they're not compliant, you have to chase them, wrestle them to gain compliance." (T3, p 7,8).
3. On August 8, 2004 applicant and her partner conducted a traffic stop and she was interviewing the driver at the driver's side window. A drunk driver struck the trooper car parked behind the stopped vehicle and her "arm was caught on the driver's side doorframe [and] A piece of -- they believe it was bumper...struck me in the back and with the cars swirling around in this accident, I was flung into the middle of the road and —and most likely lost consciousness for a little bit." (T3, p 11). The applicant injured her neck, right shoulder, hand and wrist and upper and lower back (T3, p 11). The medical care she obtained as a result of this incident included chiropractic care, physical therapy, and surgery on her right shoulder (T3, p 12, 13). She returned to full duty six months after the incident but continued to experience shoulder pain and low back pain with occasional spasm and pain down her left leg (T3, p 13).
4. On December 27, 2007 applicant was refueling her patrol car and walked to the rear of the car to clean the windows. She slipped on the ice and fell on her left hip and felt extreme pain in her lower back, left knee and neck (T3, p 14). She received medical treatment for her injuries, including chiropractic care, physical therapy, and treatment by orthopedist Dr. Wulff and was out of work for nearly a year (T3, p 15).
5. On April 8, 2011, after pulling a vehicle over for speeding, applicant stopped her trooper car on an incline and the driver side door was slightly elevated. She pushed the driver side door with her leg to try to get out of the patrol vehicle and the door "kicked back...and she tried to kick it forward" and when she got out of the car she felt severe muscle spasm (T3, p 16). Applicant testified that a ballistic panel had recently been installed in the door which added a couple of hundred

pounds to the weight of the door and she had not been notified of that (T3, p 16). She indicated that the State Police were installing ballistic panels in trooper cars intermittently when a vehicle became available (T3, p 32). She didn't notice whether the door felt heavier than normal at the start of her shift or remember whether she had gotten out of the vehicle earlier in her shift (T3, p 31).

6. In an application for benefit filed several years later, applicant described the incident on April 8, 2011 as "...I was conducting a vehicle and traffic stop and while getting out of the patrol car to interview the driver, my back went out and seized on the side of the road." (System Exhibit #1, p 9).
7. Following the April 8, 2011 incident, applicant felt low back pain and pain down both legs and had muscle spasm and trouble walking (T3, p 17, 18) and never returned to full duty.
8. She began working modified (light) duty but can no longer do so because the length of time she was permitted to work modified duty was exhausted in September of 2016, and she is on leave without pay (T3, p 33) .
9. She began treatment with Dr. Craig Montgomery in March of 2013 and she sees him every six to eight months (T3, p 18, 28). She continues with medical care overseen by a pain management clinic (New York Spine and Wellness) which includes physical therapy, massage therapy, chiropractic, and multiple nerve and compression block injections (T3, p 20, 21, 25-28).
10. Applicant testified that she is in constant low back pain which limits her movements and she cannot twist or lift heavy objects and the pain is sometimes debilitating (T3, p 19). She can no longer run or garden and her husband does much of the driving and she has trouble sleeping (T3, p 20). She feels that she is unable to physically arrest a noncompliant person or extricate someone from a vehicle or a burning building, or stand or sit in a patrol car for an extended period of time (T3, p 21, 22).
11. The applicant filed an Application for State Police Disability Retirement pursuant to RSSL section 363-b on September 27, 2013 in which she claimed she was permanently disabled from working due to degenerative facet disease, lumbar spondylosis, scoliosis, and injuries to her lower back and right shoulder sustained as a result of incidents on August 8, 2004, December 27, 2007 and April 8, 2011 while employed as a trooper (System Exhibit #3).
12. The applicant filed an Application for Tier 1&2 Accidental Disability pursuant to RSSL section 363 on November 15, 2013 in which she claimed she was permanently disabled from working due to the same conditions and based upon the same incidents as recited in her Disability Retirement Application (System Exhibit #1).
13. Both applications were disapproved by determinations dated October 28, 2014 on the basis that the applicant was not permanently incapacitated for the performance

of her duties, and with respect to the Accidental Disability Retirement, the incident on April 8, 2011 did not constitute an accident (System Exhibits #4, #2).

14. Applicant filed a timely request for a hearing and redetermination of the denial of her application (Retirement System Memorandum of Law, p 2).
15. A member shall be entitled to a State Police Disability Retirement if, at the time the application is filed, she has five or more years of service in the division and she is physically or mentally incapacitated for performance of duty (RSSL section 363-b(b)(2)(b)). The Retirement System conceded that applicant had more than five years service in the division (T1, p 9; Retirement System Memorandum of Law, p 2).
16. A member shall be entitled to a Tier1&2 Accidental Disability Retirement if at the time the application is filed, she is physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident not caused by her own willful negligence sustained in such service and while actually a member of the retirement system (RSSL section 363(a)[1]). The Retirement System conceded that the incidents of August 8, 2004 and December 27, 2007 constituted accidents within the meaning of RSSL (Retirement System Memorandum of Law, p 2).

#### Issues

17. The issues to be determined with respect to the Application for Tier 1&2 Accidental Disability Retirement are (1) whether the applicant is permanently incapacitated from performing her job duties, and if so, (2) whether the incident of April 8, 2011 constitutes an accident within the meaning of the RSSL, and (3) whether her disability was caused by an accident sustained in the service upon which her membership is based.
18. The issue with respect to the Application for State Police Disability Retirement is whether the applicant is permanently incapacitated from performing her job duties.

#### Medical Proof

#### Dr. Craig Montgomery

19. Dr. Craig Montgomery is a board-certified neurosurgeon specializing in neurological surgery (T1, p 12). He began treating applicant on March of 2013 for injuries to her lower back and has seen her on six occasions and continues to treat her (T3, p 19, 28, 38).
20. Dr. Montgomery reviewed the MRI and imaging report of January 13, 2013, the MRI of June 12, 2013, the MRI of July 30, 2015, the Functional Capacity Evaluation (System Exhibit #6, p 18-32) conducted on October 14, 2014 that he ordered, the EMG study that he ordered, and physically examined applicant each time he saw her.

21. In the first exam in March, 2013, he found that she had decreased range of motion in her back, weakness in her left calf muscle, decreased right touch sensation in the L5-S1 level, and a loss of reflexes (T1, p 20, 21). He concluded that the MRI of January 13, 2013 results were consistent with the physical findings he observed upon examination of the applicant and the history she gave. He concluded that she had multiple disc protrusions with L5-S1 nerve root radiculopathy (T1, p 19, 20).
22. The June 20, 2013 exam results were consistent with the prior exam, and the additional MRI Dr. Montgomery ordered revealed a congenital conjoined nerve root at L5-S1 and confirmed the herniations at L3-L4 and L4-L5. The MRI also revealed annular tears, which are usually associated with disc pain (T1, p 23-25). Based upon his concern whether she had the capacity to work and whether she had reached maximum medical improvement, he ordered a FCE (T1, p 26). Upon reviewing the FCE results, which indicated she had zero self limiting behavior and limited ability of physical exertion, he concluded that she could not perform full time State Trooper duties (T1, p 29, 36).
23. With respect to whether surgery might be helpful, Dr. Montgomery testified applicant's back pain was exacerbated by activity, and surgery only for pain management was not indicated in her situation (T1, p 30). He also indicated that instability of the back can occur if surgery is performed where the patient has neurological deficit and problems at multiple levels, as applicant did (T1, p 54).
24. On November 25, 2014, in his Primary Physician's Statement, Dr. Montgomery indicated that applicant's condition was chronic and she was permanently disabled from performing her duties, and she was not a candidate for surgery (System Exhibit #6, p 3). He concluded that she could not perform her duties as a trooper and "that it would be unsafe." (T1, p 36).
25. Dr. Montgomery testified that if she required it in the future, although he was not recommending it (T1, p 54,55) spinal fusion would be a reasonably safe surgical procedure (T1, p 45, 46). He did not indicate that surgery would likely or possibly enable her to be able to perform her job duties as a Trooper.
26. Dr. Montgomery also testified that it was his opinion that if the incident on April 8, 2011, when she got out of her police vehicle and felt pain, had not occurred, she should have been able to continue her duties as a trooper because she was doing those duties before the incident (T1, p 47, 48).

Dr. Patrick Connelly

27. At the request of the State Insurance Fund in connection with Worker's Compensation claims, three IME examinations (July 12, 2011, July 15, 2013, and February 17, 2014) were performed on applicant by board certified orthopedic surgeon Dr. Patrick Connelly. He issued written reports after each examination (System Exhibit #6, pp 33-56; T2, p 29 ).

28. Dr. Connelly testified on April 12, 2016 and stated that based upon his first examination of applicant and review of the MRI of May 26, 2011, her complaint of back pain and her symptoms were related to the incident of April 8, 2011 (T2, p 17; System Exhibit #6, p 32).
29. At the time of the second IME on July 15, 2013, Dr. Connelly had additional records that he didn't have at the first exam, and he concluded that the applicant had "lumbar disk degeneration with varying levels of disk protrusions at L5-S1, L4-5, and L3-4 and that the patient had multiple problems with her back dating to the accident of 2004 and that the likelihood of returning to work as a state trooper without restrictions was pretty close to zero...and that she was not a candidate for surgical intervention..." (T2, p 21).
30. Dr. Connelly testified that upon each of the physical examinations he conducted on applicant, "there were no objective clinical findings, but there were MRI findings that showed that she had three bad disks, and those correlate with her complaints [of back pain]" (T2, p 33).
31. Based upon the prior two and the third IME on February 17, 2014, Dr. Connelly testified that applicant had reached maximum medical improvement and was not capable of returning to work as a state trooper and that surgery would not enable her to return to work as a trooper (T2, p 27).

Dr. John Cambareri

32. At the request of the Retirement System, Board Certified orthopedic surgeon Dr. Cambareri performed an Independent Medical Examination of applicant on August 11, 2014 to determine whether she was disabled and unable to perform her work duties due to the condition of her right shoulder and lower back. Dr. Cambareri's report is in evidence in System Exhibit #5 at pages 1-8.
33. Dr. Cambareri reviewed the medical records, took applicant's history and examined her. With respect to the shoulder, although applicant had tenderness over her shoulder joint, Dr. Cambareri found no gross deformity, full range of motion, normal strength, sensation, reflexes, and no winging of the scapula (T4, p 11-13). During his exam, he noted that applicant had no instability in her back, good motion of her knees and hips, normal straight leg raising, no atrophy in her legs, normal reflexes in her knees and ankles, and that she walked without a limp and was able to get on and off the examining table without difficulty (T4, p 11, 13, 14; System Exhibit #5, p 7).
34. The MRIs that he reviewed revealed multi-level disk protrusions and an annular tear, and suggested there might be some nerve irritation, but Dr. Cambareri found no clinical correlation between those findings and his physical examination of applicant (T4, p 16-18). He testified that he found no "objective evidence that she had any structural damage to her lower back that would permanently disable her from her occupation as a...state trooper. And I also didn't find any evidence in the

shoulder, which she told me basically that she thought she could do her job with respect to the shoulder." (T4, p 18).

35. He concluded that since he was unable to find any objective findings to support applicant's complaints of pain, applicant was not permanently incapacitated from performing her job duties (T4, p18; System Exhibit #5, p 7). Dr. Cambareri believed that applicant could defend herself as a trooper, sit or stand for long periods of time, and wear a gun belt (T4, p 20).
36. During his testimony, Dr. Cambareri agreed that displacement of a nerve root by a protruding disc can produce pain in the lower back and that applicant told him she had constant pain in her lower back (T4, p 27). He also agreed that the range of motion of her back was less than normal, and was abnormal (T4, p 31, 32).
37. He also agreed that applicant's back pain was intermittent and temporarily disabling, and that applicant told him that her back pain was constant, and that he had "no reason to doubt that she had back pain" (T4, p 29, 30; System Exhibit #5, p 7), and that back pain can be disabling (T4, p 30).
38. Dr. Cambareri did not believe that applicant needed surgery, and testified that if her condition worsened, and she developed clear evidence of a pinched nerve in her back or some abnormality that surgery could address, then surgery might be reasonable (T4, p 19).
39. Dr. Cambareri and Dr. Montgomery both testified that applicant smoked cigarettes, and that smoking is a cause of degenerative disk disease and back problems (T4, p 19; T1, p 46) but neither doctor indicated that smoking caused applicant's back condition.

### CONCLUSIONS OF LAW

1. The applicant has the burden of proving that she is permanently incapacitated from the performance of her job duties (Matter of Weaver, v DiNapoli, 108 A.D. 3d 974; NYS Administrative Procedure Act, section 306 (1); Valerioti v New York State Comptroller, 186 A.D. 2d 858 [Third Dept., 1992]).
2. The Comptroller has exclusive authority to determine applications for retirement allowances and benefits (RSSL section 74(b); Matter of Mancuso v Regan, 190 A.D. 2d 948, [Third Dept., 1993]).
3. There is no obligation to give greater weight to the opinions of the treating physicians than those of the independent medical examiners (English v McCall, 6 A.D. 3d 923; Irish v McCall, 297 A.D. 2d 895) and the Hearing Officer has the authority to resolve conflicts in medical opinions and to credit the testimony of one expert over another (Matter of Schine v Hevesi, 40 A.D. 3d 1362).

### Permanent Incapacity



4. Based upon his examinations of applicant and review of the MRIs, Dr. Montgomery found that there was clinical correlation of applicant's back pain with the MRI findings. He noted that she had some limitation of range of motion and a loss of lower reflexes and back spasms (T1, p 20) and decreased right touch sensation at the L5-S1 level and some weakness in her left calf muscle (T1, p 21).
5. There is credible medical evidence, based upon the reports and testimony of Drs. Montgomery and Connelly, that applicant is permanently disabled due to the condition of her back (T1, p 29, 36; T3, p 27, 33; System Exhibit #6, p 3; 33-56). Their opinion is corroborated by the Functional Capacity Evaluation (System Exhibit #6, p 18-31 ) and the MRI imaging which clearly reveal that applicant has herniated disks and an annular tear and nerve impingement at L5-S1 (T1, p 19, 20, 23; T2, p 21).
6. Dr. Montgomery's reports and testimony were based upon review of the objective findings and applicant's history and his many examinations of applicant. Dr. Montgomery's and Dr. Connelly's testimony and conclusions are articulate, rational, reasonable standing alone, fact based, and reasonable when considered in light of the record as a whole, and are credited (Matter of Kosilla v Hevesi, 25 A.D. 3d 870).
7. There is evidence in the record that applicant is not permanently disabled due to shoulder and back pain consisting primarily of the report and testimony of Dr. Cambareri (System Exhibit #5, p 1-8; T4, p 18).
8. However, when considered as a whole, Dr. Cambareri's testimony and report calls into question the validity of his observations and ultimate conclusion that applicant is not permanently incapacitated. Although he agreed that displacement of a nerve root by a protruding disk can produce lower back pain, and applicant told him she had constant pain in her lower back pain, and he had no reason to doubt that she had back pain and that back pain can be disabling, he concluded, without explanation, that she could defend herself as a trooper and sit or stand for long periods of time (T4, p 20, 29, 30).
9. Although Dr Cambareri testified that there were no findings to support her complaints of pain, he also testified that the range of motion of her back was less than normal, and was abnormal (T4, p 31, 32), and the MRIs revealed multi-level disc protrusions (T4, p 16-18). He testified that she had back pain which was intermittent (despite her telling him it was constant) and only temporarily disabling. He concluded that she was not permanently incapacitated because he could not find any objective finding to confirm her complaints of pain (T4, p 18; System Exhibit #5, p 7). This conclusion was despite his noting that she had abnormal range of back motion and his belief that she had back pain, and is not supported by the credible evidence in the record.
10. The foregoing components of Dr. Cambareri's testimony significantly mitigate the credibility of his findings and opinion that applicant is not incapacitated from performing her job duties. Dr. Cambareri's report and testimony are not

reasonable or rational when considered in light of the record as a whole (Matter of Danieu v DiNapoli, 77 A.D. 3d 1152) and are not credited.

11. In determining whether the applicant is permanently disabled, if "proper medical treatment (including surgery) is reasonably and safely available to correct the disability, the [medical] board has the right to consider the disability a temporary one." (Matter of Mondello v Beekman, 78 A.D. 2d 824, affirmed 56 N.Y. 2d 513).
12. To support a determination that an applicant is not permanently disabled because she has not exhausted all of the available treatment options, there must be a finding that the treatment option suggested is reasonable, safe, and bears a reasonable chance of curing the disability (Matter of Dingee v DiNapoli, 56 A.D. 3d 876; Mondello v Beekman, *supra*; Matter of Cepeda v NYS Comptroller, 115 A.D. 3d 1146, *lv denied* 23 N.Y. 3d 906).
13. There is no medical evidence in the record that if applicant undergoes surgery there is a likelihood that she could perform her job duties as a trooper, and there is affirmative credible evidence to the contrary because Dr. Connelly testified that she had reached maximum medical improvement and surgery would not enable her to return to work as a trooper (T2 p 27).
14. The applicant has met her burden to prove that she is permanently incapacitated from performing her duties as a trooper due to the condition of her back.

#### Incident of April 8, 2011

15. The Retirement System correctly contends the the incident of April 8, 2011 did not constitute an accident within the meaning of the RSSL.
16. In pushing the police vehicle door open as part of a motor vehicle stop, applicant was engaging in her ordinary duties as a trooper. Since she parked the police vehicle on a incline with the driver side door higher, it was normal and natural and to be expected that the door would be harder to push open than if the vehicle was level. This is so irrespective of whether a ballistic panel had been added to the door.
17. Even if the ballistic panel added weight to the door, applicant didn't notice that the door felt heavy at the beginning of her shift when she got into the vehicle (T3, p 31). In addition, she was aware that her employer was intermittently installing the panels on trooper vehicles (T3, p 32).
18. If the ballistic panel in the door had added sufficient weight to the door resulting in an extraordinary event making the door dangerous or defective, one would expect that to be cited in applicant's description of the incident in her application for benefits. However, she described the incident as "... while getting out of the patrol car to interview the driver, my back went out and seized..." and made no mention of a ballistic panel nor characterized the door as dangerous or defective (System Exhibit #1, p 9).

19. Therefore, there was no credible evidence that the door was defective or dangerous, nor even if it was, that it constituted a hazard that applicant could not reasonably anticipate because she knew that the panels were being installed on trooper vehicles (Magistro v DiNapoli, 142 A.D. 3d 750). In addition, applicant had opened the door at the beginning of her shift and failed to note that the door was heavy (Matter of Manning v DiNapoli, 2017 NY Slip Op 03591).
20. There was no credible proof that a sudden or extraordinary event that was unrelated to her ordinary duties caused or contributed to her injuries (Matter of Santorsola v McCall, 302 A.D. 3d 727).
21. Since applicant was injured while pushing open a heavy police cruiser driver's door, and this exertional injury occurred while she was engaged in her ordinary duties, the incident was not an accident (Matter of Hoehn v State Comptroller, 122 A.D. 3d 984; Matter of Magliato v DiNapoli, 78 A.D. 3d 1457).

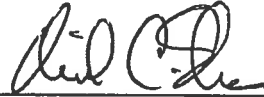
#### Causation

22. The Retirement System conceded that the incidents of April 8, 2004 and December 27, 2007 constituted accidents within the meaning of the RSSL (Retirement System Memorandum of Law, p 10).
23. There is no dispute that after each of these accidents, the applicant returned to her full time duties as a trooper, without restriction, and worked without restriction until the incident of April 8, 2011 (T3, p 18).
24. Dr. Montgomery testified that if the April 8, 2011 incident had not occurred, applicant should have been able to continue her duties as a trooper because she had been doing those duties before the incident (T1, p 47, 48).
25. Therefore, although she is permanently incapacitated from performing her duties as a trooper as determined above, it necessarily follows that her disability did not result from the accidents of April 8, 2004 and/or December 27, 2007.

#### Conclusion

26. The applicant has met her burden to establish that she is permanently incapacitated from the performance of her duties as a New York State Trooper due to the condition of her lower back, and her Application for State Police Disability Retirement pursuant to RSSL section 363-b is granted.
27. The applicant has not met her burden to establish that she is permanently incapacitated from the performance of her duties resulting from accidents on August 8, 2004, December 27, 2007 and/or April 8, 2011, and her Application for Tier 1&2 Accidental Disability Retirement is denied.

Dated: May 17, 2017  
Albany, New York



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Michael C. Eidens  
Hearing Officer

Exhibits received in evidence and reviewed:

System Exhibit #1	Application for State Police Accidental Disability Retirement Benefits; 15 pages
System Exhibit #2	Retirement System denial of Accidental Disability Retirement Application Benefits; 2 pages
System Exhibit #3	Application for State Police Disability Retirement; 8 pages
System Exhibit #4	Retirement System denial of Disability Retirement Application Benefits; 1 page
System Exhibit #5	Medical Records; 404 pages
System Exhibit #6	Supplemental Medical Records; 56 pages
System Exhibit #7	MRI report; 1 pages