

# INJURIES THAT QUALIFY FOR ACCIDENT DISABILITY STATUS

By Robert Ungaro and Nick Cifuni, LBA Disability Attorneys



A successful application for Accident Disability Retirement (“Three-Quarters”) often depends on properly articulating the accidental nature of your line-of-duty injury. The mere fact that an injury occurred in the line of duty does not automatically qualify as an “accident” defined by Administrative Code § 13-252. Injuries sustained during routine acts, even if they are performed in furtherance of an arrest or during the performance of police duties, may not entitle you to a three-quarter disability pension.

Recent court decisions have reinforced the importance of accurately detailing the accidental nature of your injury and consistently doing so across all the documentation submitted in support of your application for three-quarters. Witness statements, aided cards, and medical records,

including emergency room records and records of your own treating physicians, are often carefully reviewed and considered in the corroboration of your statement in “Part C” of your line-of-duty injury report.

The following guidelines illustrate how an accident is generally defined for the purposes of receiving an Accident Disability Retirement:

**Sudden and Injurious on Impact.** It is important to detail the traumatic nature of the event that caused your injury. A sudden fall, assault, or vehicle accident will qualify as a traumatic injury; an exertional injury or gradual degeneration of your condition will not.

**Fortuitous Mischance, Out of the Ordinary.** Injuries sustained in the course of routine and ordinary duties are generally not accidents. Similarly, injuries sustained as the result of a foreseeable risk are not treated as accidents. However, an injury sustained while performing routine duties may be accidental if it is the result of a defect or condition that the member could not have foreseen. Sustaining an injury while stepping out of a department vehicle, even if taking police action, may not qualify as an accident. Stepping out of that same vehicle and sustaining an injury due to unknown conditions such as defective pavement, grates, curbs, or the presence of a foreign substance, is more likely to be considered an accident. The failure to document that defect on your injury report and at the emergency room could easily result in the denial of an application.

**Willful Negligence.** An injury will not be treated as an accident if it is the result of the member’s own willful negligence, including horseplay, or unreasonably undertaking significant risks.

Line-of-duty injury reports should be carefully drafted to ensure that the details surrounding your accidental injury are properly documented. Similarly, any statements made to your physicians should accurately reflect the accidental nature of your injury. Greater weight is given to statements made contemporaneous with your injury; later amendments and clarifications are often viewed with a jaundiced eye.

Ungaro & Cifuni is available to assist LBA members with preparing injury reports and to guide you through the disability process. The firm also specializes in handling Social Security Disability and 9/11 Victim Compensation Fund claims. They may be reached at 212.766.5800 or via their website at [nycdisabilitylaw.com](http://nycdisabilitylaw.com)

This information is not meant to cover every situation. It is a general statement of one aspect of disability law and procedures. It is not to be used as a substitute for specific legal advice from an attorney.