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State of New York Supreme Court, Appellate Division
Third Judicial Department
In the Matter of the Claim of

Candace Miller, Respondent

v.

Transdev Bus on Demand LLC et al., Appellants
Workers' Compensation Board, Respondent

October 10, 2024

Facts: The decedent was a paratransit operator for the employer working 9 hours a day, 5 days a week. The decedent averaged 10-15 trips per day transporting passengers that were often visibly ill. His last day worked was 3/19/20. The next day, he developed symptoms consistent with COVID-19 and sought medical treatment. The claimant worsened and was admitted to the hospital on 3/24/2020 and tested positive for COVID-19. The decedent passed away a week later from respiratory failure due to COVID-19. The claim was established, and the Claimant was awarded death benefits by the Law Judge. The Board affirmed and the Carrier appealed to the Third Department.

Decision: *Affirmed.*

Discussion: The Claimant testified that her husband mentioned that people were coughing and sneezing on the back of his head at work over the week before he became ill. The vehicle the decedent drove did not have a barrier between the front and rear seats. The employer provided masks and face shields to their drivers as early as February 2020 and testified the company would not knowingly transport someone with COVID-19. However, the employer witness conceded that clients were not tested for COVID-19 prior to transport. While there was a mention in the hospital records that the decedent may have contracted COVID-19 from his pastor, the Claimant testified her husband last saw his pastor on 03/01/2020. This testimony was uncontradicted. Additionally, 03/20/2020 was outside of the 2-to-14-day incubation period which would have begun if the claimant contracted the disease on 03/01/2020. The Court agreed that the decedent was at an increased risk of

exposure to COVID-19 due to the nature of his work transporting individuals seeking medical attention. While the testimony did not establish a specific exposure to COVID-19, the Court agreed that the substantial evidence supported the prevalence of COVID-19 in the decedent's workplace.

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