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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JOEL AMAKER, Appellant

v.

CITY OF NEW YORK DEPARTMENT OF TRANSPORTATION Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

November 17, 2016

Facts: Claimant sustained injuries to his leg and shoulder as a result of a motor vehicle accident as a traffic enforcement officer. Claimant was classified with a permanent partial disability and received benefits through March of 2002. Claimant was then found to have violated Section 114-a of the Workers' Compensation Law for continuing to receive indemnity benefits after returning to work in 2000 and claimant was disqualified from receiving further wage replacement benefits. Claimant's Application for Board Review was unanimously denied as it was untimely filed. Claimant filed an Application for Reconsideration/Full Board Review without filing an appeal from the Board Panel Decision with the Supreme Court Appellate Division Third Department. The Full Board denied Reconsideration/Full Board Review and the claimant subsequently appealed to the Supreme Court Appellate Division Third Department.

Holding: *Affirmed*

Discussion: As claimant appealed from Full Board's denial of Reconsideration/Full Board Review and not the initial Board Panel decision, the merits of the underlying decision were not properly before the Court. In order to obtain review or reconsideration, claimant must demonstrate that "newly discovered evidence exists, that there has been a material change in condition, or that the Board improperly failed to consider the issues raised in the application for review in making its initial determination." In addition, "our review is limited to whether the Board's denial of the application was arbitrary and capricious or otherwise constituted an abuse of discretion. Claimant argues he was treated unfairly by the Workers' Compensation Law Judge and failed to address an argument in support of

his position that newly discovered evidence or allege a material change in condition which is relevant in order for the Full Board to decide to reconsider/review the claimant's application. The Court was not persuaded that the Board failed to consider the evidence and issues before it and therefore conclude the Full Board's denial of the claimant's request for reconsideration/full board review was proper.

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