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Supreme Court, Appellate Division, Third Department, New York

In the Matter of ERIN SCOTT, Appellant
v.

BIMBO BAKERIES USA, INC., Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

April 25, 2019

Facts: The claimant worked at a commercial bakery for 20 years and filed an occupational disease claim in 2014 for her back. Her duties included standing, lifting, bending and pushing/pulling. In August 2011, she experienced pain in various body parts, including her back, while lifting heavy trays. She missed one day from work and then returned to work. She did not seek any treatment for her back until May 2014. The judge established the claim as an occupational disease to the back but, on appeal, the Board Panel reversed, finding that the claim was time-barred under WCL § 28 based on the claimant's 2011 incident. The Full Board found the claim was not time-barred and established the claim as an occupational disease involving the back.

Holding: Affirmed.

Discussion: The Third Department noted that the Board's decision as to whether to classify a certain medical condition as an occupational disease is a factual determination that will not be disturbed if supported by substantial evidence. In this claim, the claimant testified regarding her work activities, i.e., standing, lifting, bending and pushing/pulling. Her symptoms following the 2011 incident subsided and she resumed working. The Third Department particularly noted the carrier's lack of any contrary medical evidence and the fact that there was no record of treatment prior to 2014. The Third Department noted the theory of accident advanced by

the claimant's treating physician that the claimant's symptoms in 2014 resulted from an occupational exacerbation of underlying degenerative disc disease, as opposed to stemming from the 2011 incident directly.

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