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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Richard J. BARBER, Claimant,

v.

COUNTY OF CORTLAND, Appellant,

WORKERS' COMPENSATION BOARD

April 8, 2021

Facts: Self-insured employer appealed a decision finding that the claimant was totally industrially disabled. The Board denied the appeal based on the employer's failure to properly complete Section 15 of the RB-89. Employer appealed.

Holding: *Affirmed.*

Discussion: The RB-89 indicated that an objection was made on the digital audio recording at 10:10 of the hearing without specifying the hearing date. The Court held that because there were multiple hearings in the claim the reference to a time on the digital audio recording was not specific enough to comply with 12 NYCRR 300.13(b)(2)[ii]. Moreover, the Court found that the employer's responses to other questions on the RB-89 did not cure the question 15 defect. Finally, the Court found that the Board's decision was not an abuse of its discretion.