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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Daphne FARRULLA, Appellant,

v.

SUNY AT STONY BROOK et al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent

April 8, 2021

Facts: Claimant was injured while working as a certified nursing assistant. Claim was established as a compensable injury. The claimant was classified with a permanent partial disability in 1996. After being unemployed for approximately 12 years, claimant obtained a clerical position. The claimant's medical condition remained chronic resulting in surgery in 2016. After returning to work post-surgery, the claimant retired in 2018. She then reopened her workers' compensation claim. Her employer's insurance carrier raised the issue of voluntary withdrawal from the labor market. Following testimony, a WCLJ found that the claimant's retirement was due, at least in part, to the injuries sustained in 1989. The carrier appealed resulting in a Board Panel decision that reversed the WCLJ and determined that the claimant was not entitled to reduced earnings. Claimant's request for full Board review was denied.

Holding: *Affirmed.*

Discussion: The Court found that the claimant working at her clerical position on a fairly consistent basis for several years, resuming her regular duties after surgery and opting for a regular service retirement pension was substantial evidence in support of the Board's decision.