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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Portia BLANCH, Appellant

v

DELTA AIR LINES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

April 14, 2022

Facts: The claimant, a flight attendant sustained an injury when she bumped her head against an overhead bin. The claim was established for injuries to the head. She was found to have prima facie evidence for post concussion syndrome with posttraumatic headaches and also claimed a psychological injury. After testimony the judge disallowed same and found the claimant to have voluntarily removed herself from the labor market. Awards prior to the date of the claimant's testimony were rescinded.

Holding: *Modified only regarding the date of the claimant's non-attachment to the labor market.*

Discussion: The Court confirmed there was substantial evidence to support the Board's disallowance of the additional sites and that it deferred to the Board on issues of assessments of credibility. The Court also affirmed the Board's ruling on voluntarily removal, having refenced the Board was entitled to find the claimant's testimony as "wholly incredible." However, on the issue of attachment, because the issue was first raised in May 2020 and the claimant testified on July 13, 2020, that date is the applicable date for the finding of no labor market attachment and not prior thereto.