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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Albert OLSZEWSKI, Appellant

v

PAL ENVIRONMENTAL SAFETY GROUP., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

April 14, 2022

Facts: The claimant filed a claim in 2017 alleging an injury to the left arm. In 2018 a second claim was filed alleging problems with other parts of the body due to repetitive use. A law judge disallowed both claims. The claimant filed a single RB-89 addressing both decisions. The Board reversed the decision regarding the 2018 and established that claim for an occupational disease. However, because the claimant filed only one RB-89, the appeal for the 2017 was dismissed based upon the failure of the claimant to file a separate RB-89.

Holding: *Reversed.*

Discussion: The Board denied the 2017 claim based upon a Subject Memo 046-1106 which stated that if there are multiple claims for the same claimant, the form may contain more than one claim number and the submitter must submit a separate copy of the form for each claim and underline the board number to make certain a copy is submitted to each file. However, the Subject Memo (and as noted by the court, the form, the instructions or the regulations) do not reflect that failure to file a copy in each claim could result in a denial of the appeal.