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DONALD R. STEWART (1949-2021)

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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Jose PEREZ, Respondent

v

BED, BATH, AND BEYOND, Appellants

and

WORKERS' COMPENSATION BOARD, Respondent

April 21, 2022

Facts: Following a compensable injury, the parties executed a Section 32 agreement. A hearing was held on October 28, 2019 providing approval of same, subject to the 10 day waiting period. While a hearing was held that day, the Board file lacked a copy of the transcript of same. On November 15, 2019 a final notice of approval was filed. On November 22, 2019, the claimant's attorney filed a letter indicating the claimant wanted to withdraw from the agreement. After a series of appeals to the Board and the full Board, the Board found that while the claimant's request to withdraw was untimely, the agreement contained an "inconsistent Provision" regarding and MSA annuity and directed the parties to mutually agree to modify the agreement within 90 days or the Board would do so. It was from that decision, the employer appealed.

Holding: *Dismissed.*

Decision: The Court held that the decision in question was not a final determination by the Board and as such would not be subject to review.