

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY

OF COUNSEL

July 8, 2019

**MEMORANDUM TO ALL CLIENTS OF
STEWART GREENBLATT MANNING & BAEZ**

RE: Appellate Division, Third Judicial Department Addresses the Workers' Compensation Board's Position with Regard to Compliance with 12 NYCRR 300.13 (Completion of Form RB-89)

Matter of Jones v. Human Resources Administration et al.
Decided July 3, 2019 (527432)

The Appellate Division has issued the Jones decision on July 3, 2019 addressing the Board's position with regard to Board Rule 300.13 which provides that when a party who is represented by counsel fails to comply with the formatting, completion and service submission requirements set forth by the Board, the Board may, in its discretion, deny an Application for Review. In Jones, the claim was initially established for a work-related injury to the right knee and amended to include consequential adjustment disorder. A claim was made for a consequential injuries to the claimant's back, left knee and right ankle which was litigated resulting in a June, 2017 Law Judge's decision which determined that the alleged consequential injuries were not causally related to the workers' compensation claim and accordingly disallowed the claim for consequential sites of injury.

The claimant's counsel filed an Application for Review (Form RB-89) seeking review of the Law Judge's decision. Upon review the Board determined that the application was defective because it was not filled out completely and denied the claimant's application without addressing the merits.

The claimant's attorneys argued that the Board abused its discretion in denying the Application for Review based upon the defective RB-89. The Court referenced 12 NYCRR 300.13 and noted that the Board may deny an Application for Review where the parties seeking review, other than a claimant who is not represented by counsel, fails to completely fill out the Application or otherwise fails to "comply with prescribed formatting, completion and service submission requirement." Accordingly, the Court held that the Board acted within its discretion in denying claimant's Application for Board Review and affirmed the Board.

However, it should be noted that the Court specifically refers to the facts of this case and in particular, the fact that "it is not disputed that claimant's application, however, failed to provide the requested information by leaving the box for question #13 blank." The Court then refers to the General Counsel's Guidance Document which was issued on November 23, 2018 setting forth the reasons for the Board's position which are to insure the following:

1. The completeness doctrine assists the responding party in identifying the exact issues, grounds and evidence used in support of the application in determining the issues and crafting a timely and effective rebuttal.
2. Having a complete application...also assists the Board in providing timely and effective review of the application...as it eliminates confusion over which evidence is involved in the application and which issues are preserved for appeal.

The Court determined that the Board's format requirements are reasonable giving the reasons identified by the Board and accordingly noted that the Board acted within its discretion in denying the claimant's application.

Please note that it is our position that the Jones decision is distinguishable based upon the fact that question #13 was completely left blank. Depending upon the facts and circumstances regarding not only RB-89 but also RB-89.1 Applications an argument could be made that the Board should exercise its discretion and accept an Application for Board Review provided that it can be established that there is absolutely no evidence of prejudice as a result of the irregularity of the RB-89/RB-

89.1 and specifically in cases leaving out information in a particular section which is clearly addressed in the body of the RB-89/RB-89.1 in other sections. The Board specifically indicates that the RB-89/RB-89.1 “is the application for review itself and{it} is not merely a cover sheet.” Accordingly, if it can be determined that the RB-89/RB-89.1 in and of itself contains the requisite information to satisfy the completeness doctrine and eliminate confusion over which evidence is involved in the application and which issues are preserved for appeal the Board should exercise its discretion and accept the application.

We note that there are a number of additional cases which are pending before the Appellate Division, Third Judicial Department on this issue, filed by several different claimant’s firms and carrier’s firms, and we will be addressing those decisions as they are entered.

Should you have any questions or should you wish to discuss this matter with our office please contact our office accordingly.

STEWART, GREENBLATT, MANNING & BAEZ
6800 Jericho Turnpike, Suite 100W
Syosset, New York 11791
Tel: 516-433-6677
Fax: 516-433-4342
mail@sgmblaw.com