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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of MARIE BARNETT, Respondent,

v.

BRENDA T. CALLAWAY, Appellant et al., Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

January 19, 2017

Facts: The claimant while in Florida and working as a chef manager for an uninsured employer, sustained work-related injuries to her right arm and shoulder. Claimant, a New York resident, filed for workers' compensation benefits in New York and prima facie medical evidence was found for a right shoulder injury. A WCLJ found sufficient contacts between claimant's employment and New York to establish subject matter jurisdiction over the claim. Uninsured Employer's Fund (UEF) and the uninsured employer sought administrative review and the Board declined to hear the appeal, finding the UEF's application was untimely and that the employer failed to serve a copy of its application for review on the UEF. An amended Board decision followed and denied the applications by the employer and UEF for reconsideration and/or Full Board review. The Board addressed the merits of the employer's prior application for review and affirmed the decision of the WCLJ in total.

Holding: *Affirmed.*

Discussion: The Court outlined the facts that supported the Board's decision that New York had jurisdiction over the workers' compensation claim. The claimant has had her primary and permanent residence in New York since 1983. Claimant was interviewed and hired at employer's residence in New York. The job duties included maintaining and cooking for said residence. Claimant traveled with and worked for her employer in Florida for approximately eight months out of the

year, claimant lived at her employer's residence in New York for the balance of the year for five days a week while performing her job responsibilities. Throughout employment claimant considered New York to be her home. The Court affirmed the Board's decision based upon the substantial evidence.

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