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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JAMES CIULLO, Appellant,

v.

GORDON L. SEAMAN, Respondent.

WORKERS' COMPENSATION BOARD, Respondent.

November 17, 2016

Facts:
claims

Claimant claims to have fallen off a ladder at work on August 22, 2013 and to have told his wife that he hurt his back as a result. He claimed that he exacerbated a prior injury to his back but did not file a report with his employer. He returned to work the day after the alleged incident. He subsequently had several surgeries and filed a workers' compensation claim on October 15, 2013. The employer controverted the claim on the basis that it did not arise out of and in the course of the claimant's employment and the claim was disallowed. The claimant appealed

Holding: *Affirmed*

Discussion: Notwithstanding the claimant's reliance on Section 21 of the Workers' Compensation Law, he still has the burden of showing that his accident arose out of and in the course of his employment. In this case, the Board's determination that it did not was based on substantial evidence, including the testimony of the claimant's attending physician that had initially represented on a disability benefit form that the injury was not work related and did not indicate that it was his opinion had changed until March of 2014. In addition, the initial medical reports do not reference a work-related accident.