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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of JASON COVERT, Claimant,
v.
NIAGARA COUNTY et al., Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

January 5, 2017

Facts: Claimant was a public assistance recipient and injured while assigned to work for the County as part of a work experience program. He sought lost wage benefits once public assistance benefits were suspended. In February 2014, the Judge directed the County to provide evidence of permanency. During the pendency of the County's subsequent request for a Workers' Compensation Board review of the February 2014 determination, a WCLJ determined that there was insufficient medical evidence to support an award. In July 2015, the Board affirmed the February 2014 decision, finding that payments made to claimant pursuant to the work experience program were "wages" pursuant to the Workers' Compensation Law. The carrier appeals.

Holding: *Dismissed.*

Discussion: The Court determined that the Board's decision was interlocutory in nature and did not dispose of all the substantive issues or reach a potentially dispositive threshold legal question, therefore it was not appealable. (see Matter of Santiago v NY Operators, 139 AD2d 1308, 1309 [2016]). The Board did not award the claimant wage replacement benefits, and instead, the Board deferred resolution of the claim pending the submission of additional information. Should the Board issue a final determination awarding the claimant wage replacement benefits, then the County can appeal.