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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of NERISSA CRAIG, Claimant,
v.
LEATHERSTOCKING HEALTHCARE LLC et al., Respondents,
and

WESCO INSURANCE COMPANY, CARE of AM TRUST NORTH AMERICA., Appellant.

WORKERS' COMPENSATION BOARD, Respondent.

May 12, 2016

Facts: Claimant alleged a work-related injury to her back in May 2012. The employer's carrier controverted the claim on the issue of coverage. The carrier contended that it had canceled the employer's policy in January 2012 for nonpayment of premiums. The WCLJ found that the carrier's cancellation of the policy was not in strict compliance with WCL Section 54(5) and therefore, its coverage of the employer continued through the date of claimant's injury. The Worker's Compensation Board affirmed and now this appeal ensued.

Holding: *Reversed* without costs and remitted to the Worker's Compensation Board for further development.

Discussion: WCL Section 54(5) requires a workers' compensation carrier to serve notice of cancellation of an insurance contract upon an employer "by delivering it to him, her, or it or by sending it by mail, by certified or registered letter, return receipt requested, addressed to the employer at his, her or its last known place of business." To establish compliance with the statute, the carrier is not required to produce the return receipt; rather the carrier need only demonstrate that it requested a return receipt.

In this case, the carrier produced the notice of cancellation that it allegedly sent to the employer showing a cancellation date of February 9, 2012; a mailing manifest; and a USPS track and confirm notice demonstrating that the same article was delivered to the employer's address on January 30, 2012. The carrier also submitted a Worker's Compensation Board investigator's report stating, among other things, that the Board had received notice of cancellation on January 30, 2012. In addition, the carrier's underwriter, testified that the carrier sent the notice of cancellation to the employer by certified mail, return receipt requested, and that the mailing manifest and the "track and confirm" notice demonstrated that the notice of cancellation was mailed and delivered to the employer. The foregoing was sufficient to demonstrate that the carrier complied with the requirements of WCL Section 54(5) and effectively canceled the employer's policy in February 2012.

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