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Supreme Court, Appellate Division, Third Department, New York

In the Matter GEORGE HOLSOPPLE, Respondent
v.
UNITED PARCEL SERVICE, et al, Respondent
and
SPECIAL FUND FOR REOPENED CASES, Appellant
and
WORKERS' COMPENSATION BOARD, Respondent

Decided December 13, 2018

Facts: The claimant sustained injury in April 1996 and the case was closed in July 1997. Liability was transferred to Special Funds under Section 25A in 2003. Subsequently, the claimant requested that claim be reopened in April 2012, and made a claim for lost time as of February 2011. Surgery was then authorized, although claimant was still working at that time. The Special Funds raised Section 123, arguing that there had been a true closing in April 2014 but the Board found no true closing. This appeal ensued.

Holding: Affirmed.

Discussion: The issue of true closing for purposes of determining whether Section 123 applies is a question of fact depending on whether further proceedings were contemplated. The Board found further proceedings were contemplated when surgery was authorized in April 2012 because the claimant was still working and was not going to have surgery or lost time immediately.