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Supreme Court, Appellate Division, Third Department, New York

In the Matter of CYNDIA RICCI, Claimant  
v.  
MARIA REGINA RESIDENCE, et al, Respondents  
and  
SPECIAL DISABILITY FUND, Appellant  
and  
WORKERS' COMPENSATION BOARD, Respondent.

Decided December 27, 2018

Facts: The Board Found that the claim was subject to WCL Section 15-8(d) as the carrier proved that the claimant's disability, caused by her prior 2004 claim, conditions with her heart and aorta, and arthritis made her condition materially and substantially worse than it would have been from this work-related incident alone. This appeal by the Special Funds ensued.

Holding: *Reversed.*

Discussion: The Court found that the carrier had failed to prove that the claimant's pre-existing conditions hindered, or were likely to hinder, her employability. It's consultant, an orthopedist, only performed a record review and his opinion was based on generalities and speculation. The record also did not reflect that the claimant was subject to any work restrictions or that her pre-existing conditions hindered her job performance. Also, the carrier's consultant noted that the claimant's heart and aortic conditions were controlled by medication and this has previously been found, without more, to not be a hindrance to employment.