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Supreme Court, Appellate Division, Third Department, New York

In the Matter CHARLES SWEENEY III, Appellant
v.
AIR STREAM AIR CONDITIONING COMPANY, et al, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

Decided December 13, 2018

Facts: The claim was closed by a stipulated agreement with a schedule loss of use of the right arm. Subsequently, the claimant filed a RFA-1 requesting a hearing on the issue of a penalty for late payment of the award. At the penalty hearing, counsel for the claimant accepted documents offered by the carrier as proof of timely payment. However, the Claimant then appealed, arguing that the same documents proffered at the hearing showed that the award was paid untimely. The claimant's application for review was rejected by Board because an objection was not made at the hearing. This appeal ensued.

Holding: Affirmed.

Discussion: The question of timely payment of an award is a question of fact that should have been developed at the hearing. Despite documentation to the contrary, the claimant's attorney accepted finding that award was paid timely. The court held that the Board was within its discretion to deny the application for review.