

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677
FAX 516-433-4342

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of ZBIGNIEW CZACHURSKI, Appellant,
v.
PAL ENVIORNMENTAL INC., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

December 17, 2020

Facts: The claimant worked for 20 years as an asbestos handler. He stopped working in 2012. In September 2018 he was diagnosed with a 41.25% binaural hearing loss causally related to noise exposure at work and in October 2018 he filed this claim. The carrier controverted the claim as untimely pursuant to Workers Compensation Law Sections 28 and 49-bb. After litigation a Law Judge found the claim untimely pursuant to Section 28. The claimant appealed and the Board Panel modified to the extent that it instead found the claim to be untimely pursuant to Section 49-bb. In coming to this conclusion, the Board Panel first set the date of disablement at March 3, 2013 and held that the claimant should have been aware of the hearing loss by October 23, 2015. Under Section 49-bb, which is specific to occupational hearing loss, the claimant would have 90 days from the date he should have been aware of the hearing loss in which to file the claim, meaning he would have to have filed it on or before January 20, 2016.

Holding: Affirmed.

Discussion: The question of when the claimant should have been aware of the hearing loss does not require a medical diagnosis. Here the facts clearly show that the claimant sought treatment in connection with hearing problems dating back to at least October 2014. The claimant's insistence that his treatment in October 2014 was for other issues became a credibility issue which is left to the Board to decide. The medical records the Board relied upon constitute substantial evidence for the decision reached.