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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of RICHARD LOVE, Respondent,  
v.  
VILLAGE OF PLEASANTVILLE, Appellants,  
WORKERS' COMPENSATION BOARD, Respondent.

December 24, 2020

**Facts:** The claimant, the Chief of Police, filed a claim after sustaining minor injuries in a motor vehicle accident. The carrier attempted to controvert the claim but was found to have failed to file a timely pre-hearing conference statement. The carrier previously appealed that finding to the Court but the Court Affirmed and the case was remitted for further development of the record regarding the issue of causal relationship. The carrier now appeals to the Court after the Law Judge's decision that the question of whether the motor vehicle accident had arisen out of or in the course of employment was a legal defense that had been waived, was affirmed by the Board Panel.

**Holding:** Reversed.

**Discussion:** While the carrier may have waived its defenses, this does not relieve the claimant of his burden to demonstrate a causal nexus between his employment and the accident that caused his injuries. In this case the claimant was driving his police vehicle several hours away on a personal trip that was to last several days. While there was evidence that the claimant had his work cell phone with him, was on call 24 hours per day, and drove his police car so that he could return if necessary, there was no other evidence submitted linking his trip to work. Accordingly, the Board's decision does not rest upon substantial evidence and must be reversed.