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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of HEIDI M. MORGAN, Appellant,
v.
DR2 COMPANY LLC, Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

December 17, 2020

Facts: Claimant's Application for Board Review was denied as defective for failure to properly serve the carrier pursuant to 12 NYCRR 300.13 (b) (4) (iv). The claimant then filed an Application for Reconsideration and/or Full Board Review which was also denied. The claimant's attorney then came across a document in the electronic claims folder that they had not previously noticed, advising of a new carrier. With this information, an appeal was made in the interest of justice pursuant to 12 NYCRR 300.14 (a) (3). The Board Panel held that the document was not new evidence as it had been available for two years prior to the appeal and, therefore, Claimant was classified with a permanent partial disability and 96% loss of wage-earning capacity denied the request for rehearing. Claimant then filed an Application for Reconsideration and/or Full Board Review which was denied.

Holding: Affirmed.

Discussion: The Board correctly held that the initial Application was improperly served as it was not served upon the carrier and incorrectly listed the third-party administrator as the carrier. The document alleged to be new evidence was in the electronic claims folder at the time the initial Application was filed. As for the requests for Reconsideration and/or Full Board Review, the claimant's substantive arguments in her brief fail to address these, and accordingly the appeal to the Court on these two decisions was deemed abandoned.