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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Katherine King, Appellant,
v.
NYS Dept. of Corrections, Respondent

WORKERS' COMPENSATION BOARD, Respondent.

December 9, 2021

Facts: Claimant sustained a back injury in 2006. A finding was entered of concurrent employment as a waitress, and as such, the wages earned from that employment were included in the average weekly wage calculation. Although the claimant returned to work as a Corrections Officer, due to her physical restrictions, she was unable to return to work as a waitress. Thus, she was found entitled to reduced earnings awards. In 2009, claimant was classified with a 37.5% PPD. In 2014, claimant retired from the Dept of Corrections based upon an unrelated disability and has not worked since. Both the WCLJ and the Board found that there was no basis to continue claimant's reduced earnings awards, as claimant retired from her employment with the Department in 2014 due to reasons unrelated to her established disability, and there was no documentation that claimant attempted to reattach to the labor market. This appeal ensued.

Holding: *Reversed and remitted.*

Discussion: While claimant agrees that the lost wages from the Dept of Corrections are attributable to her unrelated medical condition, she contends that she was entitled to continued reduced earnings awards secondary to her restaurant job, and that per the 2017 amendment to WCL §15 (3)(w), she is not required to demonstrate reattachment to the labor market in order for that reduced earnings award to continue. The Court found that the Board did not set forth any applicable rationale with regard to the need to demonstrate reattachment to the labor market. Given the Board's incomplete reasoning and recognizing that the

issue of attachment to the labor market is distinct from the issue of causally related lost earnings, the matter must be remitted for further proceedings.

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