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Supreme Court, Appellate Division, Third Department, New York

In the Matter of BRUNO DONATO, Appellant

v.

TACONIC CORRECTIONAL FACILITY et al., Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

October 6, 2016

**Facts:** The claimant, a corrections officer, was diagnosed with acute bronchitis and reactive airway disease secondary to an infection and as a result was out of work from 7/29/13 to 9/16/13. The claimant alleged that his exposure to bacteria while transporting a prisoner aboard a commercial flight was the cause of the infection. The WCLJ found that the claimant established a causal relationship between his diagnosis and employment and awarded benefits for lost time. The Board Panel reversed, finding that the medical evidence submitted by the claimant was insufficient to support an award of benefits. The claimant appealed.

**Holding:** Affirmed.

**Discussion:** It is the claimant's burden to establish a causal link between his work activity and pulmonary injury. When medical proof is relied upon to demonstrate the existence of a causal relationship, it must signify a probability of the underlying cause that is supported by a rational basis and not be based upon a general expression of possibility. In this case, the claimant offered the reports of Dr. Henoach and Dr. DiScala in support of his claim. The Court noted that Dr. Henoach did not offer a specific opinion as to whether a flight with bad ventilation caused the claimant's bronchitis or restrictive airway disease. Dr. DiScala did state during his testimony that the claimant's diagnosis was a result of his work-place travel but conceded under cross-examination that that claimant could have contracted the infection anyplace but simply made the assumption that it was due to airplane travel. The Emergency Room doctor, a specialist in pulmonary critical care was

provided with the same medical history but could not form an opinion on causality. The Court found that the medical evidence was speculative and failed to demonstrate a reasonable probability as to the cause of the injury.

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