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Supreme Court, Appellate Division, Third Department, New York

In the Matter of GAVIN ELLIS, Claimant

v.

FRITO LAY INC. et al., Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

April 28, 2016

Facts: Claimant, while working as a warehouse worker, was unloading a trailer when he fell down some stairs and injured his neck and back. After litigation, the WCLJ found a compensable claim and awarded benefits. The Workers' Compensation Board affirmed the decision and this appeal ensued.

Holding: *Affirmed.*

Discussion: There is a presumption that an unwitnessed workplace accident arose out of the course of the claimant's employment pursuant to WCL Section 21. However, that presumption cannot be used to establish that an accident actually occurred. In this case, although the employer presented evidence supporting its contention that claimant fabricated his claim in light of an impending disciplinary action against him and the claimant's supervisor also presented testimony which contradicted parts of claimant's testimony, the Board has authority to make credibility determinations. In this case, the Board's finding that the workplace accident had occurred is supported by substantial evidence. The employer also relied on written reports from its fitness instructor indicating a pre-existing condition based on claimant's complaints of intermittent pain to the back for years before accident. However, based on reports from claimant's doctors as well as carrier's IME finding the claimant to be temporarily totally disabled due to the accident, the employer did not overcome the presumption of compensability.