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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of JAMES ZAREMSKI, Appellant

v.

NEW VISIONS. et. al, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent.

February 18, 2016

- Facts:** In 2012 the claimant sustained an injury to his back at work and did not return to work. The claimant also was operating a self-owned appliance repair business. He returned to that job on a part time basis. The Law Judge found the claimant was entitled to reduced earnings but the Board modified that decision and found there was no viable claim for reduced earnings after January 22, 2013. The claimant appealed.
- Holding:** Reversed.
- Discussion:** The Court noted that a Board's decision is deemed arbitrary if it departs from prior Board precedent without an explanation for this departure. Previously the Board has held that while uncovered employment is not included in considering the Average Weekly Wage, it is to be considered in calculating reduced earnings. Here the Board determined that the reduced earnings were in non-covered employment and as such an award was not to be considered for reduced earnings. The case was restored to the Board for further proceedings.