

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER

LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
DAVID S. FOODEN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JILLIAN A. SMITH
JONATHAN SO

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

Matter of RODNEY LEVINE, Appellant

v

HEALTH FIRST, Respondent

and

WORKERS' COMPENSATION BOARD

Decided February 16, 2017

Facts: Following a hearing in a controverted claim, the law judge disallowed same based upon the claimant's failure to provide timely notice of the injury to the employer under Section 18 of the Workers' Compensation Law. The claimant appealed and the carrier filed a rebuttal in which it also raised the issue of defective service. The Board denied the appeal as late and for having contained an unsigned affirmation. The claimant filed a request for reconsideration and/or full Board review that was denied. The case initially went to the Appellate Division and was returned because of "serious concerns raised with regard" to the record. The Board issued a decision which made findings and certified the record which included a signed application for Board review (filed more than 30 days after the initial judge's decision).

Holding: Affirmed

Discussion: The Court confirmed it would not consider the signed appeal because it was not properly a part of the record. Turning to the issue of the unsigned appeal, the Court noted the licensed representative for the claimant could not affirm because he is not an attorney. In addition, the unsigned affidavit did not specify the date of mailing nor does it indicate the employer was served. Regarding the denial of Full Board review the Court noted their inquiry is limited

to “arbitrary and capricious or otherwise constituted an abuse of discretion.”
There has been no showing by the claimant of same by the Board.

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