

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
LUKE R. TARANTINO
THOMAS A. LUMPKIN
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 Carlos Garcia, Claimant

v.

MCI Interiors, et al, Appellant

and

Summit Retail Interiors, et al, Respondent

and

Workers' Compensation Board, Respondent

Decided February 8, 2017

Facts: The claimant worked as a plasterer for 30 years and with MCI since 2011. His duties included heavy repetitive work. In 2015, the claimant filed for workers' compensation benefits citing these activities. The case was established as an occupational disease and the date of disablement was set as March 24, 2015 and made awards thereafter. On appeal, the Board Panel rescinded the awards, pending development of the record regarding the claimant's attachment to the labor market, but affirmed the establishment of the claim as an occupational disease. MCI requested Full Board Review of this decision which was denied. This appeal ensued.

Holding: Affirmed.

Discussion: The Board's determination that the claimant suffered an occupational disease was based on substantial evidence and therefore, the Court refused to disturb it. The Court also rejected the carrier's argument that the claim should be barred by WCL Section 28 as it was filed within two years of the date of disablement and when the claimant knew or should have known that the injury was work related. The Board has great latitude in establishing the date of disablement and in this case, based its determination on a letter from the claimant's attending physician stating

that his condition was work related. Inasmuch as the claim was filed within two years of this date, it is timely and the Board's decision must be affirmed.

Stewart, Greenblatt, Manning & Báez