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Supreme Court, Appellate Division, Third Department, New York

In the Matter of MICROSLAW CHROSTOWSKI, Appellant
v.
PINNACLE ENVIRONMENTAL CORP., Respondent
And
WORKERS' COMPENSATION BOARD, Respondent

Decided February 21, 2009

Facts: The claimant worked as an asbestosis handler and was involved with clean up at the WTC following the 9/11 terrorist attacks between September 2001 and December 2001. In 2006, he developed respiratory conditions and filed a WTC-12. In 2016, he filed a claim with the Board including not only various respiratory conditions but also a back condition. The judge found that the back condition was not included under Article 8-A and disallowed that site of injury as time barred under Section 28. The Board upheld that decision.

Holding: *Reversed*

Discussion: Under Article 8-A there are several qualifying conditions which includes musculoskeletal disease. The claimant was diagnosed with various back ailments including lumbosacral neuritis, degenerative joint disease, spondylosis, sciatica and spinal stenosis. The carrier's IME determined the claimant's back condition was the result of repetitive lifting. The Court noted that while "musculoskeletal disease" is not defined in the statute a review of an authoritative medical dictionary (Taber's) lists several of the claimant's conditions under the general category of musculoskeletal disease. Considering same and the fact that the claimant's back claim was the result of a hazardous exposure while at the WTC site lifting and carrying bags, the claim for the back was deemed compensable.