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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Richard COTTER, Respondent,

v.

TOWN OF WEST SENECA, Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

February 6, 2020

Facts: This claim had been established for the left knee, and there had been a period of lost time in which the claimant was paid wages while out. The claim ultimately resulted in a schedule loss of use award and the employer was directed to be reimbursed in full for wages paid. Subsequently the claimant retired, underwent a left total knee replacement, and an agreement was reached to find a 15% increase in the claimant's schedule loss of use. The employer had claimed further entitlement to reimbursement, and Law Judge had found that the employer failed to substantiate its claim. The Board the application for Board review finding that the application was not filled out completely. Specifically, the employer did not indicate in question 15 the specific objection that was interposed.

Holding: Affirmed.

Discussion: The Court found that the relevant regulation and the accompanying instructions then in effect required the employer, in responding to question number 15 on form RB-89 – to both “specify the objection or exception that was interposed to the [WCLJ's] ruling and when the objection or exception was interposed.” Here neither requirement was met and so the Board did not abuse its discretion in denying review. The Court addressed the employer's argument that the basis for the objections was set forth in the attached brief, but found that does not cure the defects in the RB-89 form.