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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Guadalupe HERNANDEZ, Respondent,

v.

KNS BUILDING RESTORATION, INC., Appellant,

WORKERS' COMPENSATION BOARD, Respondent.

February 6, 2020

- Facts:** This claim was filed against KNS Building Restoration Inc., for injuries alleged to have occurred on the claimant's first day of work on a construction job. KNS denied that the claimant was an employee, but the Law Judge ultimately established the claim determining that KNS is the responsible employer, crediting the claimant's testimony. The Board declined to review new evidence that was submitted and affirmed.
- Holding:** Affirmed.
- Discussion:** "The existence of an employer-employee relationship is a question of fact for the Board to resolve and its determination will not be disturbed if supported by substantial evidence." While there was conflicting testimony between the claimant and the law witness presented for KNS, this presents a credibility issue that the Board may resolve, and the Board was entitled to credit the claimant's testimony, particularly as the accident occurred on the first day of work and the typical documentary evidence had not been created. With regard to the Board's refusal to consider new evidence submitted on appeal, the Board did not abuse its discretion as the evidence was presented as "newly obtained" rather than "newly discovered" and there was no explanation as to why it could not have been produced to the Law Judge.