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DONALD R. STEWART (1949-2021)

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Supreme Court, Appellate Division, Third Department, New York

Matter of MICHAEL BLAYLOCK, Appellant

v.

HARRAN TRANSPORTATION, et al., Respondents

and

Workers' Compensation Board, Respondents

February 16, 2023

Facts: The claimant sustained injuries to his neck and back in 1990. As a result of same he was classified as a permanent partial disability in 1994 and was awarded ongoing indemnity benefits. Those benefits ceased in 1997 due to a felony conviction, for which the claimant was incarcerated from 1997 through 2013. When he applied to have benefits reinstated in 2017 the Law Judge denied same having found he was barred for claiming indemnity benefits under Section 123 of the WCL. The claimant appealed that decision and the Board denied the appeal on procedural errors in 2019. The claimant's appeal to the Full Board was also denied.

In 2021, although represented by counsel, the claimant sought review again on the issue of Section 123. The Board denied the request, having noted it was untimely and lacked credible evidence. The claimant filed for full board review which was also denied on August 11, 2021. The claimant appealed that decision to the Appellate Division, having argued the Board failed to consider several medical reports.

Holding: *Affirmed.*

Discussion: The Court noted that to succeed on an application for reconsideration and/or full Board review, the party needs to show that newly discovered evidence existed, that there has been a material change in condition or that the Board improperly

failed to consider the issues raised in the application for review in making its initial determination. The standard of review is whether the Board abused its discretion or acted in an arbitrary and capricious manner in denying the application.

The Court confirmed the medical reports relied upon by the claimant were available to the Board prior to its decision. The Court also held that the “Board did not abuse its discretion in failing to consider the claimant’s untimely request for review of that issue.” The claimant failed to show the Board abused its discretion or acted in an arbitrary or capricious manner.

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