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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of KEVIN HARRELL, Appellant,
v.

BLUE DIAMOND SHEET METAL et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

January 19, 2017

Facts: Claimant filed a claim alleging occupational disease to his neck, back, both shoulders and elbows due to his repetitive work as a mechanic. The claim was controverted and in 2012 a WCLJ found that prima facie evidence of an occupational disease existed for both shoulders and elbows due to repetitive stress. However, the WCLJ found that the claimant had treatment for his neck, back and arms in 2007 and was barred by WCL §28 when he filed his claim in 2010. After administrative review, the Board found that his date of disablement was April of 2010 and therefore the claim was timely. After a discretionary full Board review, the full Board rescinded the Board Panel's previous decision and returned the matter for further consideration. The Board then upheld the WCLJ's 2012 finding that claimant's application for Board review was defective due to his failure to serve all parties of interest. Claimant now appeals.

Holding: *Affirmed.*

Discussion: The Court found that based upon the regulations in effect at the time of the underlying proceedings, 12 NYCRR former 300.13, the application had to have been filed within 30 days after notice of filing of the decision of the WCLJ together with proof of service upon all other parties in interest and the claimant had only served his prior employers and the State Insurance Fund. Therefore, the Board's denial of claimant's application for review was not an abuse of its discretion.