

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER

LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
OF COUNSEL

SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Herold Devis, Appellant

v.

Mountain States Rosen LLC, Employer

Decided January 18, 2018

Facts: The claimant met with his supervisor at 3:30 in the morning in order to drive from the Bronx to Pennsylvania in order to receive special instructions. Following an instructional demonstration the claimant returned to a locker to change his clothes when he suffered a stroke. The Board reversed the judge's decision and disallowed the case finding insufficient evidence to establish the claim.

Holding: Affirmed.

Discussion: The claimant alleged that he was entitled to the presumption of Section 21. However the Court noted this does not relieve the claimant of the obligation to establish his injury was work related. The factual determination regarding same will not be disturbed if supported by substantial evidence. The Court noted that on a regular work day the claimant would wake up at 2 a.m. and arrive at work in the Bronx at 4 a.m. and as such the claimant expert's testimony that the claimant had an arduous day was not supported by the record. There was also testimony from a neurologist noting the claimant's stroke was not related to the claimant's employment but his unrelated hypertension, cognitive heart failure, cardiomegaly and an irregular heart.