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Supreme Court, Appellate Division, Third Department, New York

In the Matter of AKHTAR ALI SHEIKH, Appellant
v.
WHITE AND BLUE GROUP, CORPORATION, et al, Respondents
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided January 10, 2019

Facts: The claimant alleged that he was assaulted July 5, 2014. The C-3 was filed on July 29, 2014. The carrier controverted the raising, among other defenses, lack of timely notice under WCL Section 18. After hearing the testimony of the claimant and a lay witness, the Law Judge disallowed the claim finding a violation of WCL Section 18 and that the claimant's account of the incident was not credible. The claimant appealed to Board Panel which affirmed the Law Judge and this appeal ensued.

Holding: Affirmed.

Discussion: Workers' Compensation Law Section 18 requires that injured employees provide their employer with written notice within 30 days. Failure to do so generally precludes the claim, unless the Board excuses the late notice because it could not be given, the employer or its agent already knew about the accident, or there was no prejudice to the employer. Even if one of these is proven by the claimant, the Board is not required to excuse the late notice, as it is a matter within the Board's discretion.

Given the lack of contemporaneous medical evidence or other proof of the assault, the Board correctly concluded that the claimant failed to prove that the employer was not prejudiced by the lack of timely notice. In addition, the Court accords the Board great deference in determining witness credibility.

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