

STEWART, GREENBLATT, MANNING & BAEZ

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

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

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

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

Supreme Court, Appellate Division, Third Department, New York

In the Matter of ROSALIND M. VILLAGRA, Appellant
v.
SUNRISE SENIOR LIVING MANAGMENT, et al, Respondents
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided January 10, 2019

Facts: The claimant filed a claim for benefits which was controverted by the carrier. At the first pre-hearing conference, the claimant failed to appear and the case was marked no further action. Afterwards, the claimant submitted a request for further action and a new pre-hearing conference was scheduled. At that time, the claimant had a medical report that did not rise to the level of prima facia medical evidence. Testimony of the claimant was scheduled, contingent on the claimant producing prima facia medical evidence.

At the resulting expedited hearing, the claimant did not produce the prima facia medical evidence and, on motion by the carrier's attorney, the Law Judge disallowed the case and marked it no further action.

The claimant then contacted the Board by telephone and was informed, by letter, that a new hearing would be scheduled. However, by a second letter, the claimant was informed that a hearing would not be scheduled as her case had already been disallowed.

The claimant then filed an Application for Board Panel Review seeking rehearing or reopening of her claim and requesting that the Law Judge's decision be corrected to indicate the claim was marked no further action, and not disallowed.

The Board denied this request, finding that it was basically an untimely appeal. This appeal ensued.

Finding: Reversed and Remitted.

Discussion: The Court found that the Board applied the incorrect statutory framework in reaching its decision. While an appeal must be filed within 30 days from the filing date of the Notice of Decision, there is not statutorily prescribed period for when a claimant can seek a reopening or rehearing of a claim. Rather, the Board must determine whether the request was made within a reasonable time after the claimant had knowledge of the facts upon which the application is made. Accordingly, the matter was returned to the Board for that determination to be made.

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