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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Renford JONES, Respondent,

v.

GENERAL TRAFFIC EQUIPMENT CORP., Appellants

WORKERS' COMPENSATION BOARD, Respondent.

January 30, 2020

**Facts:** This claimant had been previously classified with a permanent partial disability. Subsequently, the case came on for a hearing on reduced earnings and decision was made modifying a reduced earnings award from January 1, 2017 to January 1, 2018. State Insurance Fund filed an Application for Board Review, which the Board denied as the application was not filled out completely and therefore did not comply with the Board's formatting requirements. Specifically, question 15 on the RB-89 form did not state the date of the hearing at which an exception was interposed.

**Holding:** Reversed and remitted.

**Discussion:** The Court found that the State Insurance Fund provided the requisite temporal element in its response to question 15 and the Board had abused its discretion in denying the application for review. The Court specifically contrasted the situation in this case, where there was only one hearing, with a situation where there are multiple prior hearings, and found that there was no ambiguity in the State Insurance Fund's response, particularly as they had stated the exact time on Digital Audio Recording where the exception was interposed. The Court further noted that the Board's Subject Memorandum and Guidance Document which were published after the Application for Board Review were not relevant.