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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of JOANNE FULLER-ASTARITA, Appellant,

v.

ABA TRANSPORTATION HOLDING COMPANY. Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

January 6, 2022

Facts: The Board Panel rejected the claimant's Application for Board Review for failure to properly complete question 12 of the coversheet. The claimant appealed to the Appellate Division, who Affirmed the Board Panel, noting that the application was rejected for procedural reasons which meant the merits of the case were not before the Court. The claimant then returned to the Workers' Compensation Board and filed for reopening arguing that the Board lacked subject matter jurisdiction. The employer filed a rebuttal arguing the appeal for reopening was untimely. The Board disagreed with the employer's argument that the appeal was untimely, held that it did have subject matter jurisdiction over the issue, and then denied the claimant's application. The claimant appealed to the Appellate Division arguing that her application for reopening was in fact granted since the Board addressed the issue of subject matter jurisdiction.

Holding: *Affirmed.*

Discussion: The Board has continuing jurisdiction over all workers' compensation claims and did not abuse its discretion in denying the request for reopening. The Board clearly denied reopening but addressed the case only to reject the employer's timeliness objection and make it clear that the Board has subject matter jurisdiction over the issue.

The carrier did not appeal the Board Panel's decision. The case was restored to the calendar and the carrier again raised the issue of coverage. The Law Judge made no findings regarding coverage and the carrier filed an Application for Board Review. The carrier further applied for reopening on the issue of the initial hearing where it was found to be the proper carrier. The Board Panel denied these applications. Now both Mo Maier and the carrier appeal to the Appellate Division.

Holding: *Affirmed.*

Discussion: The Board retains jurisdiction over the decision to grant or deny an application for reopening. This decision is only subject to judicial review upon an abuse of discretion. Both the employer and carrier were at the hearing where the case was continued to a date certain on the issue of coverage and both failed to appear at the next hearing. Thereafter any appeals made were either untimely or procedurally defective and were properly within the discretion of the Board to deny.

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