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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of THOMAS LAZALEE, Respondent,

v.

WEGMAN'S FOOD MARKETS INC. Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

January 6, 2022

Facts: After a Law Judge denied the employer's request to cross-examine the claimant's attending physician, the employer filed an Application for Board Review. The Board Panel affirmed the Law Judge's decision. The employer appealed to the Appellate Division.

Holding: *Affirmed.*

Discussion: The request to cross examine the attending physician was properly denied as untimely. Here, the employer voluntarily paid for surgery to a site of injury that had yet to be formally established. The employer further made voluntary indemnity payments at the total rate until the claimant returned to work. At no point did the employer have the claimant examined by a consultant and only when the claimant moved to have the claim amended to formally establish it for the site of injury did the employer request to cross-examine the attending physician on degree of disability.