

**STEWART, GREENBLATT, MANNING & BAEZ**

MADGE E. GREENBLATT (RET.)  
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  
RAYMOND J. SULLIVAN  
LUKE R. TARANTINO  
THOMAS A. LUMPKIN  
DIANE P. WHITFIELD

ATTORNEYS AT LAW  
6800 JERICHO TURNPIKE  
SUITE 100W  
SYOSSET, NY 11791  
516-433-6677  
FAX 516-433-4342

DONALD R. STEWART (1949-2021)  
KAFI WILFORD (2003-2010)  
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY  
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of SAMUEL McELROY, Respondent,  
v.  
SIENA COLLEGE, Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

January 6, 2022

Facts: The employer denied this claim for reasons including the claimant's failure to provide timely notice of the accident pursuant to Section 18 of the Workers' Compensation Law. After litigation the Law Judge established the claim finding the employer was not prejudiced by the fact that it was notified of the injury 45 days after it occurred, which would be 15 days late. The Board Panel affirmed the Law Judge's decision and the employer filed this appeal.

Holding: *Affirmed.*

Discussion: While it is the claimant's burden to show that an employer was not prejudiced by late notice, here the Board properly held that this burden had been met after reviewing the record and determining the delay did not impede the employer's ability to investigate the incident. As the Board has discretion over these matters and the decision rests on substantial evidence, it will not be disturbed.