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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of MARIE MURPHY, Respondent,

v.

ENLARGED CITY SCHOOL DISTRICT, Appellant,

SPECIAL DISABILITY FUND, Respondent

WORKERS' COMPENSATION BOARD, Respondent.

Decided: July 6, 2017.

- Facts:** This is an appeal from the decision of the Workers' Compensation Board which ruled that the employer is not entitled to reimbursement from the Special Disability Fund. The claim was established for the back, neck and left hamstring in June 2007. The employer sought reimbursement from the Special Disability Fund pursuant to Section 15(8)(d) citing pre-existing asthma and prior injuries to the knees as prior physical impairment. The Judge found the employer was entitled to reimbursement. The Board reversed that determination finding that the employer failed to demonstrate the pre-existing medical conditions hindered or likely were to hinder the claimant's employment. The employer appeals.
- Holding:** Matter remitted to the Board for consideration on issue of whether the claimant qualified for reimbursement due to osteoarthritis in her right knee.
- Discussion:** The Court agreed with the Board that the employer did not demonstrate the claimant's preexisting asthma hindered or likely would hinder her employability. The Court noted that, although the claimant had asthma, she had been taking medication and there was no evidence in the record that the claimant was under any restrictions because of her asthma or that her asthma affected her ability to perform her job. The Court found that given the lack of evidence that the claimant's asthma was a hindrance to her employment, that the Board's decision that reimbursement is inapplicable due to her asthmatic condition is supported by substantial evidence.

However, the Court agreed with the employer that the Board erred in denying reimbursement from the fund without addressing whether the claim qualified for reimbursement due to the osteoarthritic condition of the right knee. The Court noted that the Law Judge based his finding that reimbursement is applicable upon both the claimant's asthma and osteoarthritis. Essentially, the Court remitted this back to the Board for consideration on the issue of whether the osteoarthritic condition would provide a basis for reimbursement from the Special Fund.

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