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State of New York Supreme Court, Appellate Division
Third Judicial Department

In the Matter of the Claim of

ZENIA MARTIN, Appellant,

v.

D'AGOSTINO SUPERMARKETS INC et. al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent,

July 3, 2025

Facts: Claimant was classified with a permanent partial disability and found to have sustained an 80% loss of wage-earning capacity, entitling her to an award of indemnity benefits for a maximum of 425 weeks. Prior to the exhaustion of her capped indemnity benefits, claimant filed an extreme hardship redetermination request (C-35 form) seeking to be reclassified, pursuant to Workers' Compensation Law § 35 (3), "to [a] permanent total disability or total industrial disability due to factors reflecting extreme hardship." Initially granted, the Workers' Compensation Board modified the Judge's decision, finding that claimant had failed to demonstrate extreme financial hardship and was not entitled to reclassification. Claimant appeals.

Holding: *Reversed.*

Discussion: Pursuant to Matter of Ackerler v Asplundh, 236 AD3d [3d Dept 2025], to determine whether a claimant has made a showing of extreme financial hardship, the Board considers the claimant's assets, monthly expenses, household income, including any spousal or family support, and any other relevant factor. Further, any such determination by the Board "will not be disturbed if supported by substantial evidence". Matter of Mystkowski v Monpat Constr. Inc., 236 AD3d at 1255 [3d Dept 2025]. Here, claimant's C-35 form, the accompanying submissions and her hearing testimony demonstrated that her essential monthly expenses, consisting of rent, utilities and basic amenities, would exceed her monthly income. The Board made no finding that claimant's income would meet her essential living expenses, there was no substantial evidence in the record to

support any such conclusion and the Board failed to conduct/provide any analysis as to how the future reduction of claimant's income, to an amount significantly below the most basic of living expenses, did not result in an extreme financial hardship.

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