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Supreme Court, Appellate Division, Third Department, New York

Matter of RENEE PEREIRA-JERSEY, Claimant-Respondent

v

ROCKLAND COMMUNITY COLLEGE, Appellatns,

and

WORKERS' COMPENSATION BOARD, Respondent

Decided June 1, 2017

Facts: This claim was established for breathing difficulties, headaches and confusion due to mold exposure, and later amended to include a consequential cognitive adjustment disorder. In 2009 the WCLJ found the claimant's work schedule should be reduced to a three day work week and awarded reduced earnings. In 2010 the employer challenged awards on the basis of no further causally related disability but the WCLJ found the claimant had a causally related disability that prevented her from working more than three days a week. The employer again challenged further causally related disability and by decision filed February 18, 2016 the Board Panel again found the claimant had further causally related disability preventing her from working more than three days a week. The carrier appealed.

Holding: *Affirmed.*

Discussion: The Board is entitled to draw any reasonable inference from the evidence contained in the record and this Court will not interfere with the Board's resolution of conflicting facts even if the evidence rejected by the Board would have supported a contrary conclusion. Here, substantial evidence supports the Board's determination that the claimant suffers from a causally-related disability that prevents her from working more than three days a week. The treating neuropsychologist had found a mild disability based on decline in auditory working memory and verbal retrieval, and the treating physician had recommended a three day a week schedule with a day off after each day worked.

The employer had only presented a medical opinion that the claimant did not have a cognitive impairment that would prevent her working 5 days a week. The employer also argued that the Board erred in not considering the issue of a violation of Section 114-a, however the Court finds that this was not brought up before the WCLJ at a hearing and was only argued on summations, therefore the Board is not obligated to consider the issue and there was no abuse of discretion in not considering it.

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