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Supreme Court, Appellate Division, Third Department, New York

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

In the Matter of JEROME HERNANDEZ, Respondent

v.

AABCO SHEET METAL, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

June 23, 2022

Facts: Appeal from a decision of the Workers' Compensation Board which ruled that claimant did not voluntarily withdraw from the labor market and awarded wage loss benefits. In this case, the claimant was employed as a sheet metal worker and union member and was laid off from his project-based employment in February of 2008 when the job he was hired for was completed. The claimant fell ill several weeks later where he was diagnosed with pulmonary embolism and nodules in the lungs and liver. Because of his medical condition, the claimant was unable to secure employment and retired in August of 2008. The claimant was then diagnosed with work-related asbestosis in 2010 and he filed a Workers' Compensation claim. The issues of voluntary withdrawal from the labor market and attachment were raised and during litigation, the Law Judge disallowed the claim finding the claimant had not been exposed to asbestos during his employment with the employer. This was reversed by the Board and the case was established for asbestosis. The Board's decision was affirmed and after additional proceedings, in January of 2019, the claimant produced documentation regarding his retirement as it

related to the established claim for asbestosis. The carrier argued the claimant's retirement was not causally related to the established claim and that the claimant had withdrawn from the labor market and that the withdrawal was voluntary. The claimant was ultimately classified with a permanent partial disability and was found to be entitled to wage loss benefits from July 8, 2015 to February 12, 2019 and those findings were affirmed by the Board. There was a finding the claimant's withdrawal from the labor market was involuntary and that he was not required to demonstrate labor market attachment for the subject time period. The carrier appeals.

Holding: *Affirmed.*

Discussion: The Court noted in its decision that the mere fact that a layoff occurred did not, in and of itself, render the claimant's withdrawal from the labor market voluntary and that the claimant's actions or lack thereof following the layoff should be considered. It was noted the claimant's decision to retire was not predicated on having been laid off but rather motivated by his medical conditions. Regarding the issue of labor market attachment, the Court agreed with the carrier that the Board inaccurately stated the date on which the issue was first raised. The Court noted the claimant was not directed to present evidence as to labor market attachment until the February 12, 2019 hearing and the claimant was not found to be partially disabled until August 7, 2020. Based on those factors, the Court found no error in the Board's determination the claimant was not required to demonstrate labor market attachment for the period in question.

Stewart, Greenblatt, Manning & Páez