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State of New York Court of Appeals

In the Matter of the Claim of

JOHN T. CARROLL, Appellant,

v.

NASSAU COUNTY POLICE DEPARTMENT et al., Respondents,

and

WORKERS' COMPENSATION BOARD, Respondent.

June 27, 2023

Facts: The claimant, a police officer, sustained injuries to the back and left knee while making an arrest. The claimant underwent back surgery on May 4, 2010. He returned to work full-duty in 2011 but was put on restricted duty in July 2019. He opted to take a normal service retirement effective May 14, 2020 but made a claim for causally related lost time. After taking testimony from the claimant, the WCLJ found the claimant involuntarily retired and entered awards. On appeal, the Board reversed concluding that claimant's disability did not prevent him from performing his light duty assignment with accommodations, and that he had voluntarily retired.

Holding: *Affirmed.*

Discussion: The Court found substantial evidence to support the Board's conclusion of voluntary removal from the labor market. In finding that claimant had voluntarily retired, the Board credited the opinions of claimant's pain management specialist that he had a 33.3% disability and the carrier's consultant that he had a moderate to marked disability over that of his treating orthopedist that his disability level progressively increased to 75% around the time of his retirement and required that he retire, an assessment made without an awareness of the accommodations being made in his light duty assignment. The Board noted that claimant had been able to work full time as a police officer for years after his 2010 surgery and was able to tolerate the restricted duty assignment that began in 2019, in which he was permitted to stand, walk and stretch as needed without repercussions, finding no persuasive evidence that he was having difficulty performing those duties before he retired.