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State of New York Court of Appeals

In the Matter of the Claim of

AESOOON SO, Appellant,

v.

ERIN'S PHARMACY INC. et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

June 13, 2024

**Facts:** Claimant filed for worker's compensation benefits on behalf of her deceased husband after he died of COVID-19. Claimant alleged that he contacted COVID-19 in the course of his work as a pharmacist. The Workers' Compensation Law Judge ("WCLJ") disallowed the claim for failure to establish a connection between decedent's employment and contraction of his illness. On July 23, 2021, Claimant's counsel filed an application for review on her behalf. On March 2, 2023, the Board denied review because Claimant failed to utilize the Board designated form in effect at the time. Claimant appealed.

**Holding:** *Reversed and remitted.*

**Discussion:** The court found the Board abused its discretion in denying Claimant's application for Board review based her counsel's failure to use the correct version of the form RB-89. Both form versions (the one Claimant filed and the later one redesigned by the Board) required the applicant to provide specific information about the exception or objection to the WCLJ's ruling. The redesigned form further required the applicant to specify when such exception was interposed as opposed to the former form simply requiring the applicant to specify whether the exception was interposed. Claimant did not specify any interposition because she was challenging findings contained in the WCLJ's reserved decision. Further, her attorney did resubmit the application using the correct form.

While the Board possesses discretion to deny review of applications, such denial was inappropriate here since the two submitted forms were nearly identical, and the Board did

not indicate that Claimant's response regarding interposition was insufficient; nor did the employer, carrier, or Board identify any prejudice resulting from Claimant's use of the previous form instead of the redesigned form. Under these circumstances, the Board should have granted review.

*Stewart, Greenblatt, Manning & Báez*