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

In the Matter of the Claim of

PETER HURLEY, Appellant,

v.

LAWRENCE SCHOOL DISTRICT et. al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

June 18, 2025

Facts: This claim involves an injured special education teacher. At the initial hearing, the case was established for causally related asthma. Claimant taught remotely during the COVID-19 Pandemic but was subsequently advised that he would have to return to in-person classroom instruction. Claimant's treating physician advised that, due to his condition, he should not be exposed to dust, mold and pollen. Ultimately, claimant's employer offered accommodations, but claimant failed to acknowledge said accommodations and never reported back to work. Following hearings, the Law Judge found that claimant's contentions were not supported by the medical evidence and, by not reporting to work, claimant had unreasonably refused a job offer and had voluntarily withdrawn from the labor market. The claimant appealed and the Board Panel affirmed without costs.

Holding: *Affirmed.*

Discussion: Pursuant to Matter of Rosario v AIG, 96 AD3d 1111, 1112 [3d Dept 2012]; whether a claimant has voluntarily withdrawn from the labor market is an issue of fact for the Board to resolve, and its resolution of that issue will not be disturbed if supported by substantial evidence in the record. Here, only one of claimants treating physicians, Dr. Morris Nejat, appeared for deposition. During his deposition, Dr. Nejat testified that claimant has chronic obstructive pulmonary disease with asthma, but he had not conducted objective functional testing to determine whether the claimant could return to work. Moreover, Dr. Nejat had reviewed claimant's medical records but had not observed any objective testing of claimant's limitations. Dr. Nejat's report that claimant could not return to work

was based on claimant's "subjective feeling". In light of the foregoing, the Court concluded that substantial evidence supported its decision that claimant voluntarily removed himself from the labor market.

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