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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

LAVERNE JONES, Appellant

v.

HUMAN RESOURCES ADMINISTRATION ET AL., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

July 3, 2019

Facts: This is an Appeal from a decision of the Board filed January 9, 2018 which ruled the claimant failed to comply with 12 NYCRR 300.13 and denied review of the decision entered by the Judge.

This case was established for injuries to the right knee and amended to include consequential adjustment disorder. The Administrative Law Judge found, after litigation, that additional claims of consequential injuries to the back, left knee and right ankle were not related to the claim and were disallowed. An Application for Board Review was filed by the claimant using an RB-89 form. The Board found the Application for Board Review was defective because it was not filled out completely and denied the claimant's application. The claimant appeals.

Holding: *Affirmed.*

Discussion: The claimant set forth an argument that the Board abused discretion in denying the Application for Board Review based upon failure to comply with rules governing the content of such applications requiring that they be filled out completely. The Court disagreed. The Court noted the Board could adopt reasonable rules consistent with and supplemental to provisions of the Workers' Compensation Law and the Chair of the Board may make reasonable regulations

consistent with the provisions of the Workers' Compensation Law. The Court noted that the Chair of the Board has prescribed that completion of an Application for Board Review means that each section or item of the application or Rebuttal is completely in its entirety pursuant to the instructions for each form filled out. The Board noted that it may deny an Application for Review where the party seeking review other than an unrepresented claimant fails to fill out completely the application or otherwise fails to comply with prescribed formatting, completion and service submission requirements. In the instant claim, Question Number 13 on the application requested the claimant provide the hearing date, transcripts, documents, exhibits and other evidence that the claimant was relying on. The claimant's application failed to provide the requested information by leaving the box for Question Number 13 blank. The Court held that the Board's format requirements for Applications for Board Review submitted by represented claimants are reasonable given the reasons identified by the Board and were promulgated pursuant to its statutory authority and broad regulatory powers. The Court found the Board acted within its discretion in denying the Application for Board Review and affirmed the decision.

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