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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

JULIE PETESIC, Appellant

v.

FOX 5 NEW YORK ET AL, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

July 18, 2019

Facts: This is an Appeal from a decision which ruled that the claimant did not sustain a causally related injury and denied the claim for Workers' Compensation benefits. The claimant filed the claim alleging multiple injuries from exposure to toxins and irritants particularly cleaning products. There was a second exposure claim filed as well asserting that the claimant contracted an airborne illness from dead rodents in her work place. Prima facie medical evidence was found for Bartonella bacteria. There was a hearing regarding both claims and the Judge issued two separate decisions. With respect to the Bartonella claim, the Judge found the claimant failed to prove a causal link between her employment and the contraction of the disease and disallowed the claim. The claimant filed an Appeal with the Board and the Board affirmed the Judge's findings. The claimant then appealed.

Holding: *Affirmed.*

Discussion: The Court noted that Section 21 of the Workers' Compensation Law is a presumption but that it does not entirely relieve a claimant from burden of establishing that his or her injury arose out of and in the course of the claimant's employment. The Court further noted that the statute is inapplicable inasmuch as the determination as to causal relationship or lack thereof in this matter was not based upon the presumption contained therein but, instead, upon medical evidence

and testimony adduced as part of the underlying hearing. The Court noted that the Board is empowered to determine the factual issue of whether a causal relationship exists based upon the record and the determination will not be disturbed if it is supported by substantial evidence. The Court noted that any medical opinion regarding causation must be rationally based and signify a probability and general possibility of underlying cause. The Court found relevant when reviewing the testimony in the matter that in addition to the claimant's allegation of exposure to rat and mouse droppings at work, the treating doctor also questioned the claimant regarding the travel history. The claimant initially relayed that there had been no travel history. However, when the doctor learned the claimant had Croatia, the doctor indicated that he could not determine whether the claimant contracted the disease at work or on the trip to Croatia. The Court noted that assessment of the credibility of the witnesses as well as medical evidence presented is in the purview of the Board.

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