

STEWART, GREENBLATT, MANNING & BAEZ

**ATTORNEYS AT LAW
6800 JERICHO TURNPIKE**

**SUITE 100W
SYOSSET, NY 11791**

**516-433-6677
FAX 516-433-4342**

**KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)**

**RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL**

**DONALD R. STEWART (RET.)
MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO**

Supreme Court, Appellate Division, Third Department, New York

In the Matter of

OPRAH PRESIDA, Claimant

v.

HEALTH QUEST SYMPTOMS INC, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

July 18, 2019

Facts: This is an Appeal from a decision of the Workers' Compensation Board which ruled that the employer and carrier failed to comply with 12NYCRR 300.13(b) and denied review of a decision by the Workers' Compensation Judge. This claim is established for the right knee. It was later amended to include a causally related injury to the lower back and total knee replacement surgery was authorized. This occurred in July 2017. The employer and carrier filed an Appeal requesting review of that decision. The Board denied the application finding it defective because it was not properly filled out pursuant to Section 12NYCRR 300.13(b)(1). The carrier appealed.

Holding: *Affirmed.*

Discussion: The Court noted that the carrier argued that the denial of the review of the Application for Board Review was arbitrary and capricious and the Court did not agree with that position whatsoever. The Court held that according to the Board's regulations, an Application for Board Review shall be in the format as prescribed by the Chair and where, as here, the Appellant is not an unrepresented claimant, the form must be filled out completely by the Appellant. The Court recognized that the RB-89 has been designated to the proper form for Applications for Board Review. The Court also discussed Subject Numbers 046-940 which advised the

parties seeking Board Review that the directive in 12NYCRR 300.13(b)(1) that the applications must “be filled out completely” means just that. The Court noted that the Subject Number does provide instructions regarding how each section should be filled out. The Court noted that the record reflected that Question Number 13 was not filled out completely. This question asks the applicant to list the primary documents upon which the application is based. In that space, the carrier wrote “Please see the Board electronic case file and citations to Board Document Identification per the attached correspondence.” The Court agreed that this failed to comply with the prescribed completion requirements.

Stewart, Greenblatt, Manning & Báez