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Supreme Court, Appellate Division, Third Department, New York

Matter of O'DONNELL, claimant,
v
ERIE COUNTY. et. al, Appellants,
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided June 14, 2018

Facts: Claimant sustained work-related injury and returned to work, but continued to experience problems related to her injuries causing her to be periodically absent from work. In addition, her job duties had changed, and required more physically demanding work. Consequently, claimant retired and began receiving disability retirement and SSDB. Claimant was classified with a permanent partial disability, and the Board found that claimant's retirement constituted an involuntary withdrawal from the labor market and that she was excused from looking for work. The Full Board modified the Board, finding that claimant was not required to demonstrate an ongoing attachment to the labor market following her retirement given the recent amendment to WCL §15(3)(w). The carrier appealed.

Holding: *Affirmed*

Discussion: WCL §15(3)(w) was amended to relieve claimants from having to demonstrate ongoing attachment to the labor market when they are entitled to benefits at the time they are classified permanently partially disabled. This amendment affects previously decided cases in which there has not been a finding that the claimant had voluntarily removed himself from the labor market at the time of the classification.