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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JENNIFER KRYSINSKI, Respondent

v.

NESCO RESOURCE/ETS STAFFING et al, Appellants

WORKERS' COMPENSATION BOARD, Respondent

June 30, 2016

Facts: The claimant suffered a sprained left knee on November 27, 2013 when her knee gave out while she was walking across a room between work stations. The case was controverted. The Workers' Compensation Law Judge and Board found the claimant had sustained a work-related injury and benefits were awarded. The employer appealed.

Holding: Affirmed.

Discussion: The Court noted that the issue of whether a compensable accident has occurred is a question of fact to be resolved by the Board and the Board's determination would not be disturbed if it is supported by substantial evidence. Additionally, the Court noted that unexplained or un-witnessed accidents which occur in the course of employment are presumed under Section 21 to arise out of such employment. This presumption can be rebutted by substantial evidence to the contrary. In this case, the employer did not dispute that the claimant's injury occurred in the course of employment but the employer contended the injury was not compensable because it was not associated with any specific job duties and occurred only when the claimant was carrying a piece of paper. Based on the claimant's testimony regarding her activities prior to the injury that day which included filling out work orders and being on her feet about half the day and frequently getting up and down and climbing ladders, coupled with the medical testimony of her doctor that the sprain could occur without a specific percipient and by simply walking, the decision was supported by substantial evidence. The Court noted that neither physician, the claimant nor independent medical examiner, attributed the claimant's injury to a non-work related

factor. The Court deferred to the Board Decision as there was substantial evidence to support the determination.

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