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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Matter of Eileen Brennan, Claimant

v.

NYS Dept. of Health, Appellant

Workers' Compensation Board, Respondent

Decided March 22, 2018

Facts: Claimant parked her vehicle in a state-owned parking garage, which she paid for via biweekly payroll deductions. While walking to her office, which was one block away, she tripped and fell on an uneven sidewalk. The Board established the claim, a divided Board Panel affirmed, and the Full Board reversed, finding the accident did not arise out of and in the course of employment. Claimant appealed.

Holding: Affirmed.

Discussion: The Court noted that there was no showing there was any special hazard on the uneven sidewalk the claimant tripped on or of a close association between the sidewalk and the access route to the claimant's office, as far as coming and going are concerned. There was no showing the sidewalk was controlled by the employer, that employees were encouraged to use it or that it existed solely to provide access to the claimant's workplace. The Court affirmed the determination that the accident did not occur in the course of claimant's employment.