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Supreme Court, Appellate Division, Third Department, New York

In the Matter of DENISE BULL, Respondent
v.
PINNACLE ENVIRONMENTAL CORP., Appellant
and
SPECIAL DISABILITY FUND, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

Decided March 7, 2019

Facts: The claimant was injured at work in 1993. In 1994, the carrier sought reimbursement for the Special Funds (Section 15-8(d)). The Judge directed the carrier to produce medical evidence to support same. The issue was not addressed until 2018 when the Special Funds was discharged without objection by the carrier provided the withdrawal was done "without prejudice." The Special Funds objected to the decision including this language and appealed to the Board. The carrier responded and noted it found evidence the Fund had previously conceded to liability under Section 15-8(d). The Board refused to consider this additional evidence based upon the carrier's failure to comply with 12NYCRR 300.13(b) (1) (iii). The Board granted the appeal of the Special Funds and directed its discharge with prejudice.

Holding: *Affirmed*

Discussion: The Court noted the Board correctly refused to consider the additional evidence based upon the carrier's failure to prepare an affidavit as to why this evidence was not previously presented before the judge as required under 12NYCRR 300.13 (b) (1) (iii).