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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Marian KRETUNSKI Appellant,

v.

CITYWIDE ENVIRONMENTAL SERVICES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent.

February 24, 2022

**Facts:** The claimant filed an occupational disease claim. After litigation, the Law Judge set the date of disablement of June 27, 2017, the date that the claimant first sought medical treatment. The claim was filed on July 18, 2019 and therefore was not timely, so it was disallowed. The Board Panel affirmed the decision and the claimant appealed.

**Holding:** *Reversed.*

**Discussion:** The Court acknowledged that the Board has broad authority to select a date of disablement, even if the date selected results in the claim being deemed untimely filed, however, the Board's determination must be based on substantial evidence. In this case, the Court found that the initial medical records relied on by the Board to reach its decision did not reference all the claimed sites of injury and also did not draw a causal link between the injuries and the claimant's work activities. This being the case, the Board's conclusion that the claimant knew or should have known that his injuries were work related at the time of the initial treatment are not based on substantial evidence and must be reversed.