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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Melissa ANDERSON, Appellant,
v.
CITY OF YONKERS, Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

March 28, 2024

Facts: The claimant was a public-school teacher who claimed a psychological injury as the result of the fear of contracting Covid-19 from co-workers and / or students. Another teacher in the school contracted Covid-19, but the claimant did not become infected. She claimed a psychological injury before the students returned to the school in person.

The claimant filed for workers' compensation benefits. After litigation, the Law Judge disallowed the claim finding that the claimant was not exposed to stress greater than that which occurred in the normal work environment. The Board affirmed the appeal and this appeal ensued.

Holding: *Reversed and Remitted to the Board for further consideration.*

Discussion: In its decision, the Court explained, at great length, that physical and psychiatric injuries must be treated similarly. It also made clear that individual pre-existing psychiatric vulnerability will not prevent a claim from being deemed compensable, even if other similarly situated workers are exposed to the same stress without impact. However, the claimant still retains the burden of proving that the injury arose in and out of the course of employment as well as a causal connection by competent medical evidence.

The Court went on to state that the widespread nature of a communicable disease should not cause exposure to it to be viewed as an ordinary part of a normal work environment.

Because the Court felt that the Board failed to take into account the claimant's particular vulnerabilities, which it would have if the injury had been physical in nature, the matter was remitted to the Board. On remand, the Board was specifically directed to take into

consideration whether the claimant proved that either a specific exposure to Covid-19 or the prevalence of Covid-19 presented an elevated risk of exposure constituting an extraordinary event. If the Board determines that there was such an extraordinary event then, using a commonsense viewpoint of an average person, and “considering the claimant's particular vulnerabilities, whether claimant established, by competent medical evidence, a causal connection between the alleged injury and the workplace accident.”

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