

STEWART, GREENBLATT, MANNING & BAEZ

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING (RET.)
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1976-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
MONICA O'BRIEN
NABISUBI MUSOKE
SACHEE N. ARROYO
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Kimberly McLAURIN, Appellant,
v.
NEW YORK CITY TRANSIT AUTHORITY, Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

March 28, 2024

- Facts: The claimant asserted in the first instance that she was exposed to Covid-19 while working as a train operator and developed a consequential psychiatric condition. Alternatively, the claimant argued that she developed a direct psychiatric condition as a result of her exposure to Covid-19 at work. The Law Judge disallowed both claims and the Board affirmed. This appeal ensued.
- Holding: *Reversed and Remitted to the Board for further consideration.*
- Discussion: With respect to the claimant's claim for Covid-19 and a consequential injury, the Court noted that there was absolutely no evidence that the claimant contracted Covid-19 during the period she claimed, and therefore found that the Board's decision in this regard was supported by substantial evidence and therefore should be affirmed.

However, for the same reasons stated in its decision in *Anderson v. City of Yonkers*:

the Board improperly applied a disparate burden in determining whether the psychological injuries alleged to have been sustained by claimant were caused by a workplace accident. The matter must therefore be remitted to the Board to determine, consistent with the guidance set forth in *Matter of Anderson*, whether claimant demonstrated "either a specific exposure to COVID-19 or the prevalence of COVID-19 in her work environment so as to present an elevated risk of exposure constituting an extraordinary event" and, if so, whether a causal connection exists between the alleged injury and the workplace accident.

Therefore, the matter was remitted to the Board for further consideration.

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