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Supreme Court, Appellate Division, Third Department, New York

Matter of JIE CAO, Respondent

v

FIVE STAR TRAVEL OF NY INC, Appellant

and

WORKERS' COMPENSATION BOARD

Decided May 18, 2017

Facts: <sup>i</sup>Claimant was involved in a work-related MVA. The employer was served with notices at various addresses, but the notices were returned as undeliverable. The employer did not appear, and two years after the accident, a WCLJ determined that the employer was uninsured at the time of claimant's accident. The employer was penalized, and held liable for all awards and assessments made under the claim. Claimant and the UEF negotiated a settlement pursuant to §32, which was approved. Five years later, the employer sought to reopen the claim and revisit the Board decision approving the settlement agreement. The employer's application was denied by the Board, and this appeal ensued.

Holding: *Affirmed*

Discussion: The Board found that no material evidence was produced by the employer that was not previously available. The Court found that the Board acted well within its discretion in refusing to consider the evidence and in denying review. Although the Board has continuing jurisdiction pursuant to §123, neither the Board nor this Court may review a waiver agreement once it has been approved.

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<sup>i</sup> This is the exact same fact pattern as the Court's decision in *Chen v. Five Star Travel of NY* decided the same day.