

STEWART, GREENBLATT, MANNING & BAEZ

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
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 (1949-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)
JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of ALEX RYAN, Appellant

v.

CITY OF ALBANY, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 19, 2022

Facts: Claimant appealed a decision of the Workers' Compensation Board that he was unattached to the labor market. Claim was established for an injury to the back. A finding was made that the claimant had a temporary partial disability. Following the carrier raising the issue of labor market attachment, the claimant did not present any evidence of job search efforts in order to demonstrate attachment but submitted a medical report alleging a temporary total disability. The presiding Administrative Law Judge found that the claimant was voluntarily removed from the labor market and payments were suspended. That decision was not appealed. The claimant requested further action and a finding was made subsequently of no new evidence of labor market attachment. That finding was appealed by the claimant and affirmed by the Board.

Holding: *Affirmed.*

Discussion: Claimant's appeal was on Board's failure to revisit the issue of labor market attachment. Appellate Division found that there was substantial evidence supporting the Board's determination that the claimant had not demonstrated his entitlement to further benefits as he remained unattached to the labor market.

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of JERMAINE WHITE, Appellant

v.

SEJ MAINTENANCE, INC., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 19, 2022

Facts: Claimant filed a claim alleging injuries when struck by debris while working as an asbestos handler. The C-3 filed by the claimant listed two different entities as the employer. Following development of the record, one of the two alleged employers was discharged, and a finding was made of correct employment. Further development of the record then occurred on accident, notice and causal relationship. The presiding Administrative Law Judge credited the claimant's testimony concerning timely notice of the injury. The Review Panel disagreed finding that the claimant failed to provide timely notice of his injuries and that such failure could not be excused. The claim was reversed and disallowed. The claimant appealed.

Holding: *Affirmed.*

Discussion: The Court reviewed the requirements of notice pursuant to Section 18 of the Workers' Compensation Law. The claimant had alleged that his employer had actual knowledge of the injury. The Court found the claimant's testimony to be inconsistent with regard to the nature of the injuries, his employer and the testimony presented by the imputed

employers. The Court held that while the Board could credit the claimant's testimony with employer/employee relationship, it was free to accept testimony offered by the alleged employers with regard to the claimant sustaining an injury and providing timely notice.

Stewart, Greenblatt, Manning & Báez