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State of New York Supreme Court, Appellate Division
Third Judicial Department
In the Matter of the Claim of

JOSEPH COYLE, Respondent,

v.

W & W STEEL ERECTORS LLC et. al., Appellants,
WORKERS' COMPENSATION BOARD, Respondent.

May 8, 2025

Facts: The issue here is the denial of the carrier's request to reopen the workers' compensation claim of a decedent who was classified permanently partially disabled and then died for reasons unrelated to the claim prior to the exhaustion of the classification award. Upon the passing of the decedent, a request for further action was made on behalf of the decedent's minor son. In accordance with the decision in Green v. Dutchess County BOCES, 183 AD3d 23 [3rd Dept 2020], revd 39 NY3d 35 [2022], a Law Judge found that the son would be entitled to the remaining classification award. The carrier did not appeal this decision. After the son was awarded the remaining benefits in this case, the Court of Appeals held that unaccrued portions of a non-schedule award cannot pass posthumously and reversed the Third Department's decision in *Green*. Given the change in the law, the carrier in this case now filed an appeal in the interest of justice. A Law Judge found for the carrier but the claimant appealed and the Board Panel reversed.

Holding: *Affirmed.*

Discussion: The Board did not abuse its discretion in holding that a change in the law (i.e. the reversal in *Green*) did not constitute a situation equating to the interest of justice where the carrier's request to reopen should be granted. The carrier had an opportunity to appeal the direction that any remaining wage-loss benefits would pass to the son in the case at hand and failed to do in a timely manner, instead improperly raising the issue for the first time as a request for reopening.