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Supreme Court, Appellate Division, Third Department, New York

In the Matter of GREGORY MCNICHOLAS, Respondent
v.

NEW YORK CITY DEPARTMENT OF CORRECTIONS, Appellants

WORKERS' COMPENSATION BOARD, Respondent

June 30, 2016

Facts: The claimant was a corrections officer and was assaulted by inmates. His claim was established for the back and left shoulder. The claimant requested authorization for cervical spine surgery in the year 2012. The accident occurred on November 23, 2010. Authorization was denied on the grounds that the neck was not an established site of injury. The claimant underwent the surgery and later attempted to establish the case for a neck condition. The Workers' Compensation Law Judge did not establish the neck. Timely notice had been raised by the employer under Section 18. The Board reversed the Judge's finding and found the employer was not prejudiced by the lack of notice and amended the claim to include a neck injury. The employer appealed.

Holding: Affirmed.

Discussion: The Court noted that while Section 18 requires that notice be given to the employer in writing within 30 days after the accident causing the injury, that failure to give the timely notice could be excused. For example, if there is no prejudice to the employer, this will not necessarily bar the claim. The Court noted that if the employer had actual independent knowledge of the event, this also would be a reason to excuse late notice.

The Court noted that the employer had timely written notice in this matter. The claimant gave testimony he had had no subsequent accident or injury to his neck and an independent medical examiner had examined the claimant prior to surgery and issued a report reflecting the claimant's complaints of causally related neck pain. The Court found there was

substantial evidence to amend the claim to include the neck as there was no prejudice to the employer by any late notice of the neck injury.

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