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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

ISMAEL CARRASQUILLO, Appellant,

v.

KISKA CONSTRUCTION, INC., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

March 16, 2020

Facts: This concerns a claim that was filed and established against one employer. The claimant then sought to have the case reopened and the record developed on the issue of proper employer. The claimant was alleging that he was actually employed by another construction company which was a subcontractor for the company he had initially filed the claim against. The Law Judge denied the request to vacate the findings pertaining to the one employer and disallowed the claim against the second employer. The claimant appealed and the Board Affirmed. The claimant did not appeal the Board's decision but relied on 12 NYCRR 300.14 to request a reopening. A purported statement of understanding between the two companies was offered as newly discovered evidence. The Board reviewed the evidence submitted by both sides and denied the claimant's application finding there was insufficient evidence to reopen the case on the issue of proper employer.

Holding: Affirmed.

Discussion: The statement of understanding offered by the claimant was undated and therefore there is no way to determine if it was in effect on the date of accident. Furthermore, the statement does nothing to connect the claimant to the employer is alleging is actually responsible. It also does not establish a contractor/subcontractor relationship between the

companies. Therefore, the Board did not abuse its discretion to find that the claimant failed to produce sufficient evidence to support a reopening.

Stewart, Greenblatt, Manning & Báez