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Supreme Court, Appellate Division, Third Department, New York

In the Matter of GUY COZZI, Appellant  
v.

AMERICAN STOCK EXCHANGE, Respondent  
and  
WORKERS' COMPENSATION BOARD, Respondent

May 16, 2019

Facts: The claimant registered as a participant in the World Trade Center rescue, recovery and/or cleanup operations in 2014 and filed a claim for workers' compensation injuries sustained at the site. In September 2015, the Judge found the claimant was not a participant in rescue, recovery or cleanup operations and disallowed the claim. The exception to timey filing under Article 8-A did not apply to the general two-year filing requirement. The Board Panel affirmed, and claimant appealed to the Full Board but not to the Third Department. The Full Board affirmed. Then the claimant then attempted to reopen the claim in 2017 but the Board found it did not have authority to rehear or reopen the claim under WCL § 123 as alleged injury occurred more than 7 years prior to the 2017 request for reopening.

Holding: Affirmed.

Discussion: The Third Department noted that, pursuant to § 123, no claim for compensation shall be reopened after a lapse of 7 years from the accident date, where the claim has been disposed of without an award after the parties in interest have been given due notice of hearings and had the opportunity to be heard and for which no determination was made on the merits. The Third Department found no abuse of discretion. The claimant additionally failed to appeal the initial decision to the Third Department.