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Supreme Court, Appellate Division, Third Department, New York

TRACY A. DiPAOLA, Claimant,

v.

McWANE, INC., et al., Appellants,

and

WORKERS' COMPENSATION BOARD, Respondent

May 30, 2019

Facts: Claim was established as a compensable death claim. Benefits were awarded to 3 minor children. The youngest child was awarded benefits payable to his mother for his use and benefit. When the minor child graduated from high school and enrolled in college as a full-time student, a WCLJ determined that he was still entitled to benefits. Employer and its third-party administrator then requested that the claim be reopened, alleging that as of the spring of 2017 the child was no longer a full-time student. A WCLJ found that the child was still a full-time student and continued benefits. On appeal, the employer requested retroactive suspension to the beginning of the spring 2017 semester alleging that there was no proof of full-time school status. Benefits were suspended unilaterally. The WCLJ decision was affirmed by the Board and even though there was a reduction in credit hours to 9 for the spring 2017 semester the missing class was made up during the summer of 2017 and therefore the dependent was a full-time student during the spring 2017 semester. Case was restored to the calendar by the Board for consideration of a late payment penalty.

Holding: *Affirmed.*

Discussion: Citing Section 16 (3)(a), the Court found that the dependent's school schedule was sufficient for the dependent to be considered a full-time student without any

break in that status. There was no evidence presented that the dependent sought to leave school or abandon his pursuit of a college degree on a full-time basis. Substantial evidence supported the Board's decision. The Court also found that the employer's objection to the development of the record on a potential penalty for late payment was premature pending a decision on that issue.

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