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Court of Appeals, New York

In the Matter of SHELLY GROVER, Appellant
v.
STATE INSURANCE FUND, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

May 2, 2019

Facts: The Court of Appeals reviewed an October 4, 2018 Third Department decision, Grover v. State Insurance Fund, 165 A.D.3d 1329 (3d Dept. 2018), which disallowed the claimant's claim. In the underlying case, the claimant injured her left shoulder on her way to work while scanning her parking pass in a parking garage located at the employer's building. The Third Department noted the garage was open to the general public and employees of other building tenants. It also contained a parking area dedicated for tenants, was owned by the building's owner and was maintained by a third-party operator. The employer did not own or maintain the garage. Though facts existed which would support a contrary result, the Board's decision was based on substantial evidence and the Third Department affirmed. Of note, there was a dissent that opined the case was compensable based a nexus between the parking facility and the employer's premises. The claimant's parking spot was in an exclusive section of the garage, available only to employees by use of a parking pass, which the employer provided at no charge, thus encouraging the claimant to park there.

Holding: Affirmed.

Discussion: In a very brief decision, the Court of Appeals simply found that there was substantial evidence to support the Board's determination that the claimant's injury is not compensable. The Court of Appeals did not address the arguments made by the dissent in the underlying Third Department decision.