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Supreme Court, Appellate Division, Third Department, New York

THERESA SCOTT, Appellant,
v.

VISITING NURSE HOME CARE et al., RESPONDENTS,
and
WORKERS' COMPENSATION BOARD, Respondent

May 30, 2019

Facts: Claimant sustained head and neck injuries in 1993 and was classified with a permanent partial disability in 1998. Benefits were awarded based on her reduced wage earnings capacity. The carrier requested reopening of the claim in 2014 on the issue of labor market attachment. The Workers' Compensation Board granted the carrier's request to reopen the claim and it was restored to the calendar for development of the record on attachment to the labor market. Following testimony, a WCLJ found that the claimant was not attached to the labor market. On appeal, the Board agreed with the WCLJ that the claimant had failed to remain attached to the labor market and had voluntarily withdrawn from the labor market as of the last hearing date. Payments were suspended as of that date.

Holding: *Affirmed.*

Discussion: Although claimant did not request further appeal from the Board's decision, the claimant did request further action following the amendment to Section 15(3)(w) effective April 10, 2017, requesting retroactive reinstatement of her benefits from the date of suspension, alleging that the requirement of proving attachment to the labor market was not applicable to this claim, based on the claimant being classified with a permanent partial disability as of 1998. The Court said that the narrow question in this claim was whether a claimant classified with a permanent

partial disability in 1998, subsequently found not to be attached to the labor market in 2016 was subject to the 2017 amendment to Section 15(3)(w). The Court said that inasmuch as the issue was one of statutory interpretation, deference need not be given to the Board's interpretation of the statute. Whether a statute is to be applied retroactively is a question of legislative intent. The Court held that the amendment to the section was applicable to claimants who were classified prior to the effective date of the amendment. The Court held that because a finding was made in 2016 that this claimant was not attached to the labor market the 2017 amendment to Section 15(3)(w) did not apply to this claim. The Court distinguished this case from other cases where there had been a finding of involuntary withdrawal from the labor market.

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