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Supreme Court, Appellate Division, Third Department, New York
Matter of SUSAN WHITMEYER, Respondent

v.

ONEIDA COUNTY, et. al., Appellants,

and

SPECIAL FUND FOR REOPENED CASES, Respondent,
WORKERS' COMPENSATION BOARD

Decided November 16, 2017

Facts: Claim was established as compensable accident in 2006. A decision finding no compensable lost time through January 24, 2012 was affirmed by the Board in a subsequent decision. Claim was reopened by self-insured's TPA in 2013, alleging applicability of Section 25-a. The Law Judge found that Section 25-a applied and discharged the employer. On appeal, the Board modified the decision and found that the claim was improperly reopened and that Section 25-a did not apply. The employer a appealed.

Holding: *Affirmed.*

Discussion: Although the Court ruled that the application to reopen was made more than 7 years from the date of the accident and more than 3 years from the last payment of compensation, the employer's request to reopen was predicated on a medical report from within 7 years of the date of the accident. Therefore the RFA-2 filed by the employer with the attached medical report did not form a proper basis to reopen the claim for Section 25-a purposes. In light of the recent Court of Appeals decision in *American Economy Insurance Company* this decision is probably of limited importance.