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Supreme Court, Appellate Division, Third Department, New York

In the Matter of Angela PAGE, Appellant,

v

LIBERTY CENTRAL SCHOOL DISTRICT, Respondent

and

Workers' Compensation Board, Respondent

November 12, 2020

Facts: Claimant was found to have no further disability as a result of exposure to toxic mold at the workplace. Subsequently, the claim was amended to include consequential adjustment disorder with depression and anxiety. The claimant received treatment covered by the employer's workers' compensation carrier from 2004 through 2011. However, the Board found that the claimant's provider had acted as an independent medical examiner or consultant rather than as a treating provider and precluded both his reports and testimony based upon unspecified noncompliance with Workers' Compensation Law § 137 and 12 NYCRR 300.2. The Board further found that claimant had no further causally related lost time or disability as a result of her psychiatric condition, relying on, among other things, the absence of medical reports indicating that she had a psychiatric disability based on the preclusion.

Holding: *Reversed.*

Discussion: The Court found a lack of substantial evidence for the Board's conclusion that, although the claim should be amended to include a consequential adjustment

disorder with depression and anxiety, there was no causally related disability or compensable lost time due to that psychiatric diagnosis. The Court noted that while the Board may disregard medical opinions as incredible or insufficient even where contrary medical evidence is not presented, it may not fashion its own medical opinion. Claimant's physician and the IME agreed that claimant was disabled as a result of her consequential psychiatric illness, differing only on the degree. The Court found the Board's nonspecific rationale given for rejecting their findings as based upon an "incomplete record" or "incorrect interpretation of the record" has no support in the record.

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