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Supreme Court, Appellate Division, Third Department, New York

In the Matter of Carmina PROFETA, Appellant,

v

EDWARD J. BOSTI ELEMENTARY SCHOOL, et al, Respondents

and

Workers' Compensation Board, Respondent

November 12, 2020

Facts: The Board concluded that claimant voluntarily withdrew from the labor market two weeks after the injury-producing incident, noting that claimant did so without seeking treatment or advice from a medical professional. The Board further found that although claimant remained attached to the labor market, any loss of earnings was not the result of her compensable injuries.

Holding: *Affirmed.*

Discussion: The Court noted that whether a retirement or withdrawal from the labor market is voluntary is a factual determination to be made by the Board, and its decision will be upheld when supported by substantial evidence. In order for such retirement or withdrawal from the labor market to be deemed involuntary, there must be some evidence that the claimant's disability caused or contributed thereto. With respect to claimant's asserted loss of earnings, where there has been a voluntary removal from and subsequent reattachment to the labor market, the claimant must demonstrate that his or her earning capacity and his or her ability to find

comparable employment has been adversely affected by his or her disability. The Court found no basis upon which to disturb the Board's decision.

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