

**STEWART, GREENBLATT, MANNING & BAEZ**

MADGE E. GREENBLATT (RET.)  
ROBERT W. MANNING  
RICARDO A. BAEZ  
DAVID J. GOLDSMITH  
PETER MICHAEL DeCURTIS  
LAURETTA L. CONNORS  
JOHN K. HAMBERGER  
LISA LEVINE  
ANDREA L. De SALVIO  
KRISTY L. BEHR  
RAYMOND J. SULLIVAN  
LUKE R. TARANTINO  
THOMAS A. LUMPKIN  
DIANE P. WHITFIELD

ATTORNEYS AT LAW  
6800 JERICHO TURNPIKE  
  
SUITE 100W  
  
SYOSSET, NY 11791  
  
516-433-6677  
  
FAX 516-433-4342

DONALD R. STEWART (1949-2021)  
KAFI WILFORD (2003-2010)  
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY  
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of SONYA GORBEA, Appellant,  
v.  
VERIZON NEW YORK INC., et al, Respondents  
and  
WORKERS' COMPENSATION BOARD, Respondent

November 24, 2021

Facts: Appeal from a decision of the Workers' Compensation Board filed January 8, 2020 which denied claimant's Request for Reconsideration and/or Full Board Review.

The claimant herein was unrepresented and applied for Workers' Compensation benefits alleging work-related stress which purportedly caused an exacerbation of a preexisting psychological condition. The case was litigated resulting in a disallowance of the claim with a finding that the claimant did not set forth facts demonstrating that she suffered work stress greater than other technicians working for the employer. Although the decision was filed on October 29, 2018, the claimant's appeal was received by the Board in April of 2019 which was untimely. The claimant alleged that she did file a timely appeal and provided the Board with an appeal which she alleged was never processed by the Board dated November 16, 2018 and provided documentation via certified mail return receipt requested with a return receipt allegedly received on November 20, 2018. The claimant's appeal was denied by the Board in a September 2019 decision finding that she failed to provide sufficient evidence for timely filing. An appeal was then filed requesting Reconsideration and / or Full Board Review which was denied in a January 2020 decision.

The claimant never appealed from the September 2019 decision and the appeal to the Court was only from the denial of Reconsideration and/or Full Board Review.

Holding: *Reversed.*

Discussion: The Court noted that since the claimant only appealed from the January 2020 decision denying Reconsideration and / or Full Board Review the its review was limited to whether the Board abused its discretion or acted in an arbitrary and capricious manner in denying the Application for Reconsideration and / or Full Board Review. The Court noted that it was evident that the Board did not fully consider the issues raised by the claimant and had it done so, the proof submitted by the claimant would appear to give rise to the presumption that she mailed an appeal in November of 2018 that was timely received by the Board but merely misplaced. Accordingly, the Board could not rationally conclude that Reconsideration and / or Full Board Review was unwarranted, therefore its denial of that relief was arbitrary and capricious. The Court remitted the matter to the Board for further proceedings consistent with the Court's decision.

*Stewart, Greenblatt, Manning & Poel*