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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Sonya Gorbea, Appellant,
v.
Verizon New York Inc., Respondent

WORKERS' COMPENSATION BOARD, Respondent.

November 25, 2021

Facts: An unrepresented claimant's claim for work-related stress was disallowed by the Board in October of 2018. The claimant's appeal, filed in April 2019, was denied as untimely. She then submitted an appeal letter dated November 16, 2018, as well as other documentation supporting the fact that had sent items to the Board in a timely fashion, including a return receipt addressed to the Board and signed by someone indicating that the items were received "11/20." In a September 2019 Decision, the Board denied claimant's application for review as untimely, finding that she submitted insufficient evidence for timely filing. Her application for Full Board Review was denied in January of 2020. Claimant appealed solely from the Decision of the Full Board addressing whether the denial of her appeal by the Board was "arbitrary and capricious."

Holding: *Reversed.*

Discussion: The Board had determined in its September 2019 Decision that it could not verify what claimant had mailed to it and that the return receipt alone was insufficient to find a November 20, 2018 filing date for her appeal. Claimant noted in her application for reconsideration to the Full Board that her argument did not rest upon "the return receipt alone," as she cited to the copy of her November 16, 2018 appeal and a tracking printout connecting an item mailed on that date to the return receipt. The Court noted that the Board did not fully consider the issues raised by the claimant, as had it done so, the proof that she submitted would appear to give rise to a presumption that she mailed an appeal in November 2018 that was "timely received by the Board, but merely misplaced."

Claimant further provided evidence that was not available at the time of her April 2019 submission and that rebutted the Board's finding that no proof identified the signatory of the November 2018 return receipt as a Board agent, namely, a return receipt from a June 2019 filing with the Board that appeared to be signed by the same person. The Court found that the Board could not rationally conclude from the above facts that claimant's application for Full Board review was unwarranted, and it follows that its denial of that relief was arbitrary and capricious and must be reversed.

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