

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 STANLEY G. PHILLIPS, Appellant
v.

M. L. BROOK DISTRIBUTOR SERVICES, Respondent

WORKERS' COMPENSATION BOARD, Respondent

November 18, 2021

Facts: Appeals from a decision of the Workers' Compensation Board filed May 17, 2019, which denied claimant's request for an Extreme Hardship Redetermination pursuant to Workers' Compensation Law Section 35 and from a decision of the Board filed June 4, 2019 which denied claimant's request for reclassification as permanently totally disabled and from two decisions of the Board filed August 12, 2019 and October 4, 2019 which denied claimant's Request for Reconsideration and /or Full Board Review.

The claimant herein sustained a work-related injury which was established for injuries to the neck, back and later amended to include consequential adjustment disorder with depression. The claimant was classified with a permanent partial disability and a loss of wage-earning capacity of 85% entitling him to indemnity benefits not to exceed 450 weeks. The statutory CAP was scheduled to end on or about November 15, 2018. In August of 2018, the claimant filed an Extreme Hardship Redetermination Request pursuant to Workers' Compensation Section 35(3). The claimant's request was denied by the Workers' Compensation Law Judge and on appeal, the Workers' Compensation Board, in a May 17, 2019 decision, upheld the Law Judge's decision finding that the claimant failed to demonstrate extreme financial hardship and any unusual or unexpected expenses that could be considered extreme. A Request for Reconsideration and /or Full Board Review was denied.

In November 2018 and February 2019, four separate C-27 forms requesting reopening upon a change in claimant's medical condition were filed alleging that the claimant was totally disabled. Upon reviewing the C-27 forms, the Board in a decision dated June 4, 2019 denied claimant's request for permanent total disability reclassification indicating that there was insufficient evidence of a change in condition to warrant reclassification. Three of the C-27 forms were not considered since they were filed after the statutory CAP expired. A Request for Reconsideration/Full Board Review was also denied on this issue. Accordingly, the Board Decisions were appealed to the Court.

Holding: *Decisions of May 17, 2019 and August 12, 2019 affirmed, and Decision filed on June 4, 2019 reversed with matter remitted to the Workers' Compensation Board.*

Discussion: The decisions of May 17, 2019 and August 12, 2019 were affirmed which dealt with the Board's denial of the claimant's request for an Extreme Hardship Redetermination based upon extreme financial hardship. The Court noted that the Board properly considered the claimant's assets, monthly household income, including whether he had any spousal and family support and monthly expenses. The Court noted that the Board properly examined the testimony and the claimant's submissions which indicated that the claimant's monthly income would be less upon the expiration of the statutory CAP, however, also indicated that the claimant's Social Security Disability Benefits were increased each month as well as the claimant's rent would be cut in half as a result of the expiration of the indemnity CAP. Other significant monthly expenses were identified which the Board noted were not recurring or could be reduced.

Regarding the June 4, 2019 decision denying reclassification based upon an alleged change in condition the Court agreed with the claimant's appeal that the Board's determination with respect to the timeliness of his submissions accompanying his Request for Reclassification was in error. Specifically, the Court notes that the Board improperly refused to consider three of the C-27 forms which were submitted by the claimant's doctors after the expiration of the claimant's statutory CAP. The Court specifically indicates that a request for reclassification does not have to be filed prior to the expiration of a statutory CAP which is supported by Workers' Compensation Law Section 15(6-a). Accordingly, the June 4, 2019 decision was reversed and remitted to the Workers' Compensation Board for further proceedings consistent with the Court's decision.