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Supreme Court, Appellate Division, Third Department, New York

In the Matter of THOMAS E. QUINN, Appellant  
v.

PEPSI BOTTLING GROUP, INC., et al, Appellants  
and  
SPECIAL DISABILITY FUND, Respondent  
and  
WORKERS' COMPENSATION BOARD, Respondent

November 18, 2021

Facts: Appeal from an Amended Decision of the Workers' Compensation Board filed October 23, 2019 which ruled that the employer's third-party administrator is not entitled to reimbursement from the Special Disability Fund.

The claimant herein sustained a work-related injury to his left foot which was subsequently amended to include a consequential injury to the back and reflex sympathetic dystrophy. The employer, its third-party administrator and the Special Funds Conservation Committee settled the indemnity portion of the claim for \$145,000.00 and the Special Funds agreed to reimburse the third-party administrator \$83,200.00. The case settled and the third-party administrators did not request reimbursement from the Special Funds Conservation Committee until more than eight years after the agreement was approved by the Board. Reimbursement was denied by the Special Funds on the basis that reimbursement had to be requested within a year from the third-party administrator's payment of the lump sum to the claimant as provided pursuant to Section 15(8)(h)(2)(B). The Law Judge initially agreed with the third-party administrator indicating that the agreement to settle did not contain language that reimbursement was subject to the statutory limitations of the Workers' Compensation Law. The Board Panel affirmed the Judge. However, Reconsideration and/or Full Board Review was requested by the Special Funds which resulted in an Amended Board

Decision finding that Workers' Compensation Law Section 15(8)(h)(2)(B) applied by operation of law. Accordingly, the third-party administrator's request for reimbursement was deemed untimely. The third-party administrator appealed to the Court.

Holding: *Affirmed.*

Discussion: The Court affirmed the Full Board noting that although a decision duly filed and served approving a Section 32 Agreement submitted to the Board shall not be subject to review under Workers' Compensation Law Section 23. The Board's continuing jurisdiction under Workers' Compensation Law Section 123 includes consideration of the threshold issue of whether the statutory time limitations in Workers' Compensation Law Section 15-(8)(h)(2)(B) were applicable. Essentially, the fact that the Section 32 settlement did not address the statutory time limits of Workers' Compensation Law Section 15 did not preclude the Board from addressing the statutory time limitations especially in a case like this where the third-party administrator waited more than eight years to request reimbursement.

Stewart, Greenblatt, Manning & Pask