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Supreme Court, Appellate Division, Third Department, New York

In the Matter of ALROY RICHARDS, Appellant

v.

ALLIED UNIVERSAL SECURITY a/k/a FJC SECURITY SVS, INC et al, Respondents

and

WORKERS' COMPENSATION BOARD, Respondent

November 18, 2021

Facts: Appeal from a decision of the Workers' Compensation Board filed May 11, 2020 which ruled that claimant did not sustain an accidental injury arising out of and in the course of his employment.

The claimant was employed with Allied Universal Security as a security officer between April 2017 and June 2017 and alleged that as of April 28, 2017 he began experiencing pain while moving oxygen tanks at the nursing home. The issue in this case was whether the claimant sustained an injury arising out of and in the course of his employment. Although the claimant stopped working in June 2017, the claim was not filed until July 2018 and serious issues arose regarding notice pursuant to Section 18. Following the testimony, the Workers' Compensation Law Judge disallowed the claim on the basis that the claimant did not sustain an accidental injury arising out of and in the course of his employment.

The claimant appealed and the Workers' Compensation Board Panel affirmed. An Application for Reconsideration and /or Full Board Review was denied. The claimant appealed to the Court.

Holding: *Affirmed.*

Discussion: The Court noted that claimant had the burden of demonstrating that an accident occurred out of and in the course of the claimant's employment and furthermore, the question of whether a compensable accident occurred is a factual issue for the Board to resolve, and the Board's determination will not be disturbed if supported by substantial evidence in the record.

The Court noted the record contains substantial evidence to support the Board Decision and accordingly, deferred to the Board's credibility determinations.

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