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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JOSE URDI ALES, Appellant
v.

DURITE CONCEPTS, INC. / DURITE USA, et al, Respondents
and
WORKERS' COMPENSATION BOARD, Respondent

November 18, 2021

Facts: Appeal from a decision of the Workers' Compensation Board, filed May 13, 2020, which ruled that claimant did not sustain a causally related occupational disease and denied his claim for Workers' Compensation benefits.

The claimant worked as a construction worker and alleged an occupational disease resulting in ailments, respiratory problems due to exposure to epoxy and other chemicals allegedly during the course of his employment. The claim was controverted and after litigation, the Workers' Compensation Law Judge credited the testimony offered by the employer and disallowed the claim. On appeal, the Board Panel affirmed the Law Judge's decision and the claimant appealed to the Court.

Holding: *Affirmed.*

Discussion: The Court noted that in order to establish an occupational disease, the claimant must prove a recognizable link between his or her condition and a distinctive feature of his or her employment. As the Board's Decision is a factual determination it will not be disturbed if supported by substantial evidence. The Court reviewed the claimant's testimony and noted that the Board is the sole arbiter of witness credibility and accordingly, the Board was free to reject less than compelling medical evidence and lay testimony to support a claim. Accordingly, the Court noted that the Board Decision was supported by substantial evidence and would not be disturbed.