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Supreme Court, Appellate Division, Third Department, New York

In the Matter of GEORGE GRINNAGE, Respondent

v.

NEW YORK CITY TRANSIT AUTHORITY, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

November 17, 2022

Facts: Appeal from decision of Workers' Compensation Board filed March 22, 2021, finding the claimant sustained a causally related occupational disease and from a decision dated December 3, 2021 which denied the employer's Application for Reconsideration/Full Board Review.

The claimant worked as a bus driver for 31 years for the same employer. On March 17, 2020, the claimant was treated for pain and limitation to the wrists, hands, knees and left hip as well as the left shoulder. There was a medical report detailing his work duties to perform tasks required to operate a bus. Left shoulder symptoms began in 2005 with intermittent pain in both knees in 2008 or 2009. Symptoms worsened in 2015. In 2018, the right knee was swollen and in 2018 there was draining of fluid from the knee. The symptoms persisted and in March of 2020, the claimant was examined by Dr. Hedrych and diagnoses were rendered in the report dated March 17, 2020 for repetitive stress injuries including bilateral knee derangement with tendonitis, bilateral wrist/hand derangement with tendonitis, left shoulder and left hip derangement with tendonitis and three types of neuropathies including brachial plexopathy.

A claim was filed for Workers' Compensation benefits and a finding of *prima facie medical evidence* was entered based on the March 17, 2020 report. The record was developed with medical testimony as well as the claimant's testimony. There was a denial of a request for additional time to secure an independent medical examination. While the Judge found the claimant credible, the Judge also found that Dr. Hedrych was not fully aware of the claimant's prior treatment history and did not review all medical records and therefore, the Judge found there was insufficient evidence to establish a causal link between the claimant's work and his injuries and the claim was disallowed. An Application for Board Review was filed with the Workers' Compensation Board and the Board reversed the decision of the Judge finding there was sufficient evidence, and the claim was established for causally related injuries to the left shoulder, left wrist and for carpal tunnel syndrome as well as the left thumb, left hip and bilateral knees. An Application for Full Board Review/Reconsideration was filed by the employer which was denied. The employer appeals from both decisions.

Holding: *Affirmed.*

Rationale: The Court found and noted that the Board's decision as to whether to classify a certain medical condition as an occupational disease is a factual determination that will not be disturbed if it is supported by substantial evidence. The Court noted there was unrefuted medical testimony provided by Dr. Hedrych that the diagnoses rendered were causally related to the claimant's distinctive nature of his employment activities. The Court noted the doctor recounted the claimant's specific job activities over a three-decade career as a bus driver. The Court noted that in light of foregoing uncontroverted evidence that repetitive actions were a distinctive feature of the claimant's job duties and the medical evidence of a recognizable causal link between his condition/diagnoses and the distinctive features of his work, substantial evidence supports the Board's factual determination and will not be disturbed. The Court further found the doctor was well aware of the claimant's prior medical treatment. Regarding the request for extension of time to secure an independent medical examination, the Court was not persuaded. Regarding the employer's argument that the Board erred in denying an Application for Full Board Review, said application was premised upon employer's claim that it never received the claimant's Administrative Appeal (Form RB-89). However, the Court noted that on the RB-89 form there was an Attorney Affirmation of Service attesting that it was served by mail on the employer. In applying for Full Board Review or Reconsideration, the employer did not dispute that this was a correct address or that other "necessary parties of interest" were not served pursuant to 12 NYCRR 300.13(a)(4)(b)(2)(iv). The Court found that it would affirm the Board's denial of the Full Board Review on those grounds.