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Supreme Court, Appellate Division, Third Department, New York

In the Matter of FERNANDO NUNEZ, Appellant

v.

YOUNG MENS CHRISTIAN ASSOCIATION OF GREATER NEW YORK et al, Respondents

and

WORKERS' COMPENSATION BOARD

November 17, 2022

Facts: The Appeal was filed regarding a finding that the claimant had no further causally related disability after March 24, 2019, and it denied authorization for surgery to the lumbar spine as well as an Appeal from the Board's denial of the claimant's Application for Reconsideration/Full Board Review.

The claim at bar was established for an injury to the back. It was noted that the accident for the Workers' Compensation claim was in July of 2018. There was an incident at home in March of 2019 where the claimant reported picking something up off the floor and became paralyzed and couldn't move. The claimant went out of work at that time. Testimony was taken and the Judge found in a Reserved Decision in April of 2021 that the March 24, 2019, incident at home exacerbated the claimant's condition and the claimant was awarded indemnity benefits at a temporary total disability rate from that date. An appeal was filed, and the Workers' Compensation Board modified the decision to find the claimant had submitted insufficient and incredible evidence that he had sustained a further causally related disability subsequent to March 24, 2019. The claimant appealed.

Holding: *Affirmed.*

Rationale: The Court noted that there is no presumption of a continuing disability under the Workers' Compensation Law. The claimant must demonstrate through competent medical evidence a continued disability that is causally related to the work-related accident. In this case, the claimant indicated the reason he could not work any longer was because of the March 2019 incident. The independent medical examiner who examined the claimant noted that the claimant did not report to him any prior work accidents or any subsequent injuries inclusive of the March 2019 incident. The independent medical examiner acknowledged that his medical findings including the conclusion the claimant's condition was causally related to the July 2018 work-related injury was based upon an incomplete history which did not include reporting injuries or accidents subsequent to the Workers' Compensation accident. One of the claimant's treating doctors also testified that the claimant did not inform him about the subsequent incident. Another doctor testified that when assessing the claimant for surgery, there was reliance on studies completed subsequent to the March 2019 incident, but that doctor had no diagnostic imaging or medical records from before the incident that occurred at home. The Court noted that based upon this testimony, the Board found that the opinions giving causal relationship to the work-related injury were not credible. The Court affirmed the Board's decision.

Regarding the Appeal of the Board's denial of the Application for Reconsideration/Full Board Review, there was no allegation of any newly discovered evidence or material change in condition and therefore, there was no abuse of discretion.