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State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of FRANK AUNGST, Respondent

v.

FAMILY DOLLAR et al, Appellants

and

WORKERS' COMPENSATION BOARD, Respondent

Decided November 16, 2023

Facts: A claim was filed for Workers' Compensation benefits based upon contracture of COVID-19 in the workplace. After contracting COVID-19, the claimant suffered a consequential stroke requiring hospitalization. The claim was controverted. Ultimately, after litigation, the case was established for COVID-19 as an occupational disease and for consequential stroke. Upon Administrative Review, the Board modified the decision finding the claimant provided credible testimony and sufficient evidence to demonstrate an accident arose out of and in the course of employment resulting in causally related COVID-19 infection and the claimant sustained a consequential stroke. The carrier appealed.

Holding: *Affirmed.*

Rationale: The Court notes in its decision that based upon a review of the testimony of the claimant as well as medical evidence, that the claimant met the burden of establishing that the injury arose out of and in the course of employment and that it was supposed by competent medical evidence. The Court essentially found substantial evidence

supporting the Board's conclusion that the claimant sustained a work-related injury by contracting COVID-19 during the course of his employment. The Court also noted that with respect to establishing the consequential stroke, the Board was entitled to reject the opinion of the carrier's consultant and credit the claimant's doctor's opinion and therefore, there was substantial evidence to support establishment of the consequential stroke.

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