

STEWART, GREENBLATT, MANNING & BAEZ

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
SACHEE N. ARROYO
OF COUNSEL

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

In the Matter of MEHWISH SHAKIL Appellant

v.

NEW YORK CITY TRANSIT AUTHORITY, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

Decided November 30, 2023

Facts: The claimant was employed as a mass transit customer service agent and after interacting with an emotionally disturbed person, the claimant took a three-month unpaid leave from work under the Family Medical Leave Act. The claimant returned to work and had a panic attack. She sought medical attention and was diagnosed with causally related anxiety and acute stress reaction. Notice of the claim was given on June 4, 2021. The employer filed a FROI on June 15, 2021, noting that this was a medical only claim but agreeing to pay the claim "with liability." The claimant filed a claim for Workers' Compensation benefits on June 21, 2021, asserting post-traumatic stress disorder.

The claimant argued the claim should be established as the carrier had failed to controvert it and paid her medical bills. The employer argued that there was no indexing of the claim which would trigger a 25-day time period to file a Notice of Controversy. A decision entered that the employer was entitled to controvert the claim. After the record was developed, the Judge credited the claimant's testimony regarding the factual issues but disallowed the claim finding the incident did not qualify as an accident in that the claimant testified she frequently experienced verbal abuse while working in the transit

system and therefore did not establish that the stress that caused her psychiatric injury was greater than that which similarly situated workers experienced in normal work environment. The claimant appealed. The Board affirmed the Judge. The claimant filed the instant Appeal.

Holding: *Matter remitted to the Board to address all issues raised by claimant on Administrative Appeal and provide explanation for determination.*

Rationale: Although the Board concluded that Workers' Compensation Law Section 25(2)(b) did not apply in this case and that the employer was entitled to controvert the claim and develop the record, the Board did not address the related arguments including the employer's First Report of Injury form and time limits regarding the filing of Notice of Controversy. Therefore, these issues must be addressed by the Board before the Court will review the matter.

Stewart, Greenblatt, Manning & Pook