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Supreme Court, Appellate Division, Third Department, New York

Matter of NATALIA ROMANKO, Appellant

v

NEW YORK UNIVERSITY et al., Respondents

and

WORKERS' COMPENSATION BOARD

Decided October 5, 2017

Facts: This is an established claim for bronchiectasis, mycobacterium infection and exacerbation of asthma. The symptoms began in 2009 and the claimant's work location was moved to accommodate her in 2011. In July of 2011, the claimant entered into a separation agreement with the employer that ended the claimant's employment, settled a previously filed complaint, and provided severance pay. The claimant also received unemployment benefits. Over a year after leaving her employment, she made a claim for causally related lost time. The Board found that the claimant voluntarily withdrew from her employment and did not demonstrate a reattachment to the labor market. Therefore she was not entitled to indemnity benefits. The claimant appealed.

Holding: *Affirmed*

Discussion: Generally, a claimant who voluntarily withdraws from the labor market by retiring is not entitled to lost time benefits unless the claimant's disability caused or contributed to the retirement. In this case, none of the claimant's medical records from around the time she separated from employment, supports the conclusion that the claimant's respiratory condition was disabling or contributed to her entering into the separation agreement. However, even if the claimant's departure from employment is voluntary, an award is permitted, provided the claimant demonstrate a reattachment to the labor market. In this case, the Board previously found the testimony of Dr. Keating to be credible, specifically that the claimant had a mild to moderate degree of disability and did not advise her

against full-time work. Beginning in July of 2013, the claimant was only working six hours per week as an accountant and did not seek any other employment.

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