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Supreme Court, Appellate Division, Third Department, New York

In the Matter of SHELLY A. GROVER, Appellant
v.
STATE INSURANCE FUND., Respondent.
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided October 4, 2018

Facts: Appeal from decision of Workers' Compensation Board which found that the claimant did not sustain an accident in the course of employment and the claim was denied.

On the date of accident, the claimant was driving her personal vehicle and was injured when she reached out of her car to scan the parking pass at the parking garage located at the employer's business. The WCLJ established the claim. The Board Panel reversed and found the claim was not compensable.

Holding: *Affirmed.*

Discussion: The Court noted that whether a compensable accident occurred is a question of fact to be resolved by the Board and the determination would not be disturbed if it is supported by substantial evidence. In this case, the Third Department relied on the facts that it was the claimant's personal car, that the garage was open to the public, that the garage was owned by an entity other than the employer itself and that the garage was maintained by a third party. Because there was substantial evidence to support the Board's conclusion, it must be affirmed.

Dissent: The dissent in this case stated that the standard for review was not substantial evidence since the factual evidence in this case was uncontradicted. Rather, the dissent stated that it was simply a question of law. They focused on the facts that the employer had

assigned a parking spot for the claimant within the garage and that the claimant had access to her office through an elevator in the garage.

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