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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

Joanne FULLER-ASTARITA, Appellant,

v.

ABA TRANSPORTATION HOLDING COMPANY, Respondent.
Workers' Compensation Board Respondent.

October 31, 2019

- Facts: Claimant appealed from a decision of the Workers' Compensation Board, filed which ruled, among other things, that claimant failed to comply with 12 NYCRR 300.13(b) and denied review of a decision by the Workers' Compensation Law Judge.
- Although claimant did not file a claim for workers' compensation benefits, her employer did and, by decision filed July 11, 2017, a Workers' Compensation Law Judge determined that she had, in fact, sustained work-related injuries to her back, pelvis and abdomen. Her attorney appealed and in response to question 12 on the RB-89 application regarding the "Basis of Appeal," counsel wrote, "*Please see attached legal brief.*"
- The Board, among other things, denied the application for review, finding that the application was not filled out completely as required by 12 NYCRR 300.13(b).
- Holding: *Affirmed.*
- Discussion: Claimant denied that the accident was work-related because she was laid off from employment previously and, instead, alleges that the employer and its workers' compensation carrier only accepted liability for the accident "as a means of shielding [themselves] from civil liability."
- Contrary to claimant's contention, the Board's decision denying the application for review did not address the merits of the WCLJ's decision but was limited to her failure to follow the Board's procedural rules and regulations. As such arguments in her

regarding the underlying merits of the WCLJ's decision were not properly before the court.

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