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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Loretta BARTON, Appellant,

v

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., et al., Respondents,

and

Workers' Compensation Board, Respondent.

October 29, 2020

Facts: Decedent established a claim for workers' compensation benefits for the occupational disease of asbestosis. He died 23 years later and claimant, decedent's spouse, filed a claim for workers' compensation death benefits. The Board found the report relied upon by the claimant had not been sent to the employer in violation of 12 NYCRR 300.2(d)(4)(iv), precluded the report and in consideration of this finding, the Board found that claimant had proffered no admissible evidence of a causally-related death, disallowed the claim and closed the case.

Holding: *Reversed.*

Discussion: Pursuant to 12 NYCRR 300.2(d)(4)(iv), copies of written reports of medical experts made based on a records review to be used for reference at a hearing must be filed with the Board and submitted to all other parties three days prior to the hearing. It was uncontested that the employer was not provided a copy of the report pursuant to the regulation and, therefore, the report was properly precluded. The Court found that rather than summarily disallow the claim, the matter should

have been marked as no further action, thereby providing claimant with an opportunity to proffer additional information to satisfy her burden of submitting prima facie medical evidence.

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