

STEWART, GREENBLATT, MANNING & BAEZ

**ATTORNEYS AT LAW
6800 JERICHO TURNPIKE**

**SUITE 100W
SYOSSET, NY 11791**

**516-433-6677
FAX 516-433-4342**

**KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)**

**RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL**

**DONALD R. STEWART (RET.)
MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO**

Supreme Court, Appellate Division, Third Department, New York

Matter of KORREIN CASTRO, Appellant,

v

BAYBRENT CONSTRUCTION CORP. et al., Respondent,

and

WORKERS' COMPENSATION BOARD, Respondent.

October 8, 2020

Facts: Claimant had a work accident on December 4, 2018 and sustained injuries to the right elbow and right knee. She returned to work on December 6, 2018 and was then laid off on December 14, 2018. The claimant saw her doctor on December 21, 2018, following which, based upon review of an MRI as well as a physical examination, the doctor found a temporary total disability. The Judge found the claimant entitled to benefits as of 12/21/18, and the carrier appealed. The Board reversed, finding the claimant was not entitled to indemnity awards inasmuch as her loss of earnings was due to reasons unrelated to her disability, and that she had voluntarily withdrawn from the labor market. Claimant appealed.

Holding: *Affirmed.*

Discussion: The record establishes that claimant returned to work following her injury without restrictions. Claimant and the employer's field supervisor both testified that claimant was laid off on December 14, 2018 and that claimant was informed that the layoff was due to a lack of work, as the job for which she was hired had been completed. Claimant acknowledged that she thereafter withheld her name from the union's "Out of Work List" and has made no attempts to otherwise find employment outside her union restrictions, but applied for, and received, unemployment insurance benefits, indicating that she was able and ready to return

to work. Furthermore, the field representative for her union testified that work has been available for union members since December 15, 2018. In view of the foregoing, substantial evidence supports the Board's decision that claimant's loss of earnings was due to her voluntary withdrawal from the labor market following her layoff on December 14, 2018 and not as a result of her work-related disability.

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