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Supreme Court, Appellate Division, Third Department, New York

Matter of ABID A. QURESHI, Appellant,

v

RITE AID CORPORATION et. al, Respondents.

and

WORKERS' COMPENSATION BOARD, Respondent.

October 1, 2020

Facts: Claimant alleged injuries secondary to workplace stress, harassment and abuse. The claim was established for major depression by the Judge, but then disallowed following appeal to the Board, as the Board felt the claimant had not demonstrated that he was subjected to stress greater than that which other similarly situated workers experience in the normal work environment. Claimant appealed.

Holding: *Reversed and remitted.*

Discussion: A Board determination cannot be sustained when it is clearly based on incorrect facts or an inaccurate reading of the record. Claimant testified that a history of harassment and discrimination culminated in a mental breakdown on March 3, 2017. In reversing the Judge's establishment of the claim, the Board relied on its belief that, prior to the March 2017 breakdown, claimant refused an offer by the employer of a lateral transfer to a new position under a different supervisor. The Board emphasized that claimant "opted to stay under the supervision of the manager alleged to be harassing him" and concluded that his "refusal of the new position, prior to the March 3, 2017 breakdown, diminishes the credibility of his assertions." Pursuant to the undisputed testimony of the employer's director of field systems, however, the offer of the new position was made "about 90 days or so" after the March 3, 2017 breakdown, when claimant had already stopped

working. The case was accordingly remitted for a new determination based upon accurate facts.

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