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Supreme Court, Appellate Division, Third Department, New York

Matter of BRENDA SANCHEZ, Appellant,

v

NEW YORK CITY TRANSIT AUTHORITY, Respondent,

and

WORKERS' COMPENSATION BOARD, Respondent.

October 1, 2020

**Facts:** Claimant filed a claim for repetitive stress injuries in June of 2016. The Board set the date of disabled as February 15, 2013 and, finding that claimant knew or should have known that her condition was causally related to her employment at that time, disallowed the claim as time barred. Claimant appeals

**Holding:** *Reversed.*

**Discussion:** In finding that the claim was untimely, the Board relied on the February 15, 2013 progress notes of claimant's pain specialist. In the notes, the pain specialist noted that claimant's back pain was better with rest and medication, while lifting, bending and carrying heavy weight made it "worse." At no point does the pain specialist find a causal relationship between repetitive stress and claimant's condition. The Board further relied on claimant stating in her 2016 application for workers' compensation benefits that she developed pain due to repetitive movements such as lifting, bending, standing and walking at work as support for its finding that claimant should have known in 2013 that her condition was work related. The claim was not filed, however, until after claimant stopped working and a physician found a causal relationship between her pain and her job duties in 2016. Inasmuch as the medical evidence cited by the Board did not draw a causal link between claimant's injuries and her employment until 2016, the Board's

conclusion that she "knew or should have known" of that link in 2013 is not supported by substantial evidence.

*Stewart, Greenblatt, Manning & Báez*