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Supreme Court, Appellate Division, Third Department, New York

Matter of HOLLY TURNER, Appellant,

v

NEW YORK STATE DEPT OF CORRECTIONS, et. al, Respondent,

and

WORKERS' COMPENSATION BOARD, Respondent.

October 8, 2020

Facts: The decedent was classified with a PPD in 2007 and died in 2016. His widow filed a claim for death benefits, contending that decedent's post-disablement, sedentary lifestyle and resulting weight gain were factors contributing to his death. The claim was ultimately denied, and the disallowance was affirmed by the Board.

Holding: *Affirmed.*

Discussion: The Court rejected the claimant's assertion that the Board failed to apply the WCL Section 21 presumption, as decedent's death occurred years after his employment had ceased and was neither unwitnessed nor unexplained; rather, decedent died in a hospital after sustaining a gastrointestinal bleed, and the death certificate lists the cause of death as hypertensive heart disease. Even if the presumption were applicable, the presumption would have been effectively rebutted by the death certificate and the records of decedent's primary care physician, the latter of which revealed that decedent, who was morbidly obese and a smoker, suffered from chronic hypertension.

Absent the WCL Section 21 presumption, claimant bears the burden of establishing, by competent medical evidence, that a causal connection existed

between decedent's death and his employment. Claimant's physician opined that it was more likely than not that decedent's pain, spasm and sleep interruption were causally related to his prior established work injuries and that such conditions, in turn, more than likely contributed to decedent's sedentary lifestyle with increased weight and unstable blood pressure. However, the doctor conceded that he did not review any of the medical records maintained by decedent's primary care physician. When it was noted that those records disclosed a history of smoking and chronic hypertension, together with evidence that the decedent was noncompliant with his treatment regimen, the doctor confirmed that all of these would be contributing factors in the decedent's death. Further, the doctor conceded that he did not review the hospital records, which would have allowed him to render a more informed opinion as to causal relationship. Accordingly, the Board's determination that the decedent's doctor's opinion was insufficient to support a finding of causally related death is based upon substantial evidence.

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