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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Crystal McCREA, Appellant,

v.

CITY OF BUFFALO, Respondents,

and

WORKERS' COMPENSATION BOARD, Respondent.

October 27, 2022

Facts: The claimant injured her low back and was out of work for about a month. Although she had a temporary partial disability, she was able to return to work on a full-time basis because she was allowed to work from home as the result of the Covid-19 pandemic. About five months later, claimant was informed by her employer that all employees were required to resume working from the office on a rotating basis. The claimant advised the employer that she was unable to return to the office as the result of her temporary partial disability, and the employer, in turn, asserted that the claimant's subsequent lost time was not causally related to her disability. Following an IME, testimony from claimant's treating doctor and hearings, the Judge found that the claimant did not voluntarily withdraw from the labor market and thus she was found entitled to continuing temporary partial benefits. The Board disagreed, finding the claimant refused to accept a light duty assignment and had therefore voluntarily withdrawn from the labor market. Claimant appealed.

Holding: *Appeal moot and dismissed.*

Discussion: While this appeal was pending, the Board issue an amended Decision, again determining that the claimant had no causally-related lost earnings, but did so upon a different legal analysis. The second Board decision expressly noted that its prior decision was amended and superseded.

A review of the Amended Board Panel Decision—2022 WL 4294780—reveals that the claimant testified to having driven down to Florida with her husband in October of 2020 in order to oversee work being done on her second home. Thus, the Board concluded that although the claimant’s doctor testified that the claimant should have work restrictions that allow her to work from home so that she can lie down while she is working, the claimant's testimony supports a finding that the reason for her inability to work in the employer's office on a rotating basis was because she left New York State for Florida in October 2020. As such, the Board Panel found that the claimant's lost earnings were not causally related to her established injury.

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