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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of JAIME ESPINOZA, Appellant,  
v.  
CITY SAFETY COMPLIANCE CORP., et. al., Respondents,  
WORKERS' COMPENSATION BOARD, Respondent.

October 12, 2023

Facts: After leaving the jobsite and signing out for the day, a safety manager was injured pulling a gate in the parking area where he left his personal vehicle. The claim was denied by the carrier and after litigation a Law Judge disallowed the claim as not arising in the course and scope of employment. Both the claimant and employer witnesses testified and, while credibility issues are left to the Board, its decisions need to rest upon substantial evidence. The Law Judge's disallowance of the claim was affirmed by the Board Panel and this appeal ensued.

Holding: *Reversed.*

Discussion: The claimant's testimony regarding the fact that he was instructed to park where he did was not contradicted. The claimant was also uncontradicted in his testimony that the general contractor left supplies in the parking area thus creating a sufficient nexus in time and place to make the parking area considered an extension of the jobsite. Given some of the facts revealed in the claimant's uncontradicted testimony, the Board's decision to disallow the claim does not rest upon substantial evidence and must be reversed.