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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of THERESA POLONSKI, Claimant,

v.

TOWN OF ISLIP et. al., Appellants,
WORKERS' COMPENSATION BOARD, Respondent.

October 12, 2023

Facts: Claimant, the widow of the decedent, who was a highway maintenance crew leader who was out of work for nine months following a causally related spinal fusion surgery. Upon return to work the decedent requested less strenuous duties per the advice of his doctor. After working a shift doing demolition work the decedent was called back into work nine hours later to clear snow. The decedent called his wife and told his supervisor he was experiencing chest pains. He was sent to the break room alone where he was later found unresponsive. He was transported to the hospital and pronounced dead. The autopsy report listed the cause of death as atherosclerotic and hypertensive cardiovascular disease secondary to acute Oxycodone intoxication. A Law Judge's decision that the death was causally related was affirmed by the Board Panel. This appeal ensues.

Holding: *Affirmed.*

Discussion: While an unwitnessed death that occurs during the course of employment is presumed compensable, if the employer rebuts the presumption, the burden shifts back to the claimant. After the autopsy report was held to rebut the presumption of compensability, the claimant overcame the burden shift by offering competent medical evidence to show a causal connection between the decedent's death and

his employment. Whether the burden shift has been overcome is a factual question left to the discretion of the Board to decide.

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