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State of New York Supreme Court, Appellate Division  
Third Judicial Department  
In the Matter of the Claim of

Okina Lebeau , Appellant,

v.

Meet Caregivers Inc., Et al., Respondents,  
Workers' Compensation Board, Respondent

October 10, 2024

Facts: The claimant allegedly injured her right leg and knee as a result of an incident in which a coworker assaulted her with a chair. Following the trial, the case was established by the Law Judge for an injury to the right knee. The Board reversed that decision, finding that the claimant failed to demonstrate that the injury arose out of and in the course of employment. The claimant appealed to the full Board which denied review. The claimant then appealed to the Third Department.

Decision: Affirmed.

Discussion: The claimant testified that her and her co-worker had a verbal altercation the day before the incident. The next day the claimant and her co-worker were conducting COVID-19 testing at school and the co-worker bumped into the claimant. The claimant alleged it was deliberate. Later that day, the claimant testified that the co-worker hit her with a folding chair on purpose while walking by. The claimant called the police to report the incident. The police responded and an ambulance was called. No police report was filed. The co-worker testified to having no communication with the claimant the day before the incident. Contrary to the claimant's testimony, the co-worker testified the claimant started an argument over hand sanitizer and got aggressive and in her face. The co-worker moved her working area away from the claimant and admitted to moving a folding chair. However, she denied hitting the claimant. A witness who testified did not see any of this but testified that it was possible it happened. The claimant's manager also testified to performing an investigation that consisted of speaking to all employees working at the school that day, school staff and the principal.

Everyone the manager contacted recited a similar chain of events which lined up with the co-worker's testimony. The manager was not aware of any prior issues between the two.

The Board credited the co-worker and manager's testimony, noting that the claim of an altercation contrasted with the testimony which suggested transitory contact by the chair. While an incident report referenced a chair brushed the claimant's leg, the report was unsigned and even if true did not support the claim that a physical assault took place. The EMT report additionally indicated normal findings, while the claimant testified to being unable to walk or move after the alleged incident. The court agreed with the Board's assessment of the evidence in disallowing the claim and agreed that the claimant did not demonstrate that the alleged injuries arose out of and in the course of employment. The Board's decision was found to be supported by substantial evidence.

Stewart, Greenblatt, Manning & Prosz