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Supreme Court, Appellate Division, Third Department, New York

In the Matter of HALINA RASIEJ, Appellant,

v.

SYSKA HENNESY GROUP INC. et al., Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

December 22, 2016

Facts: Decedent, claimant's husband, died on a business trip due to a sudden cardiac arrest in a hotel room. Carrier argued that the death was not casually related to his employment and a WCLJ denied workers' compensation death benefits to claimant. The Board ruled that decedent's death did not arise out of the course of employment and denied claimant's claim for workers' compensation benefits. The claimant appeals.

Holding: *Affirmed.*

Discussion: The issue on appeal is whether decedent's death was causally related to his employment. In instances when there is an unwitnessed or unexplained death that occurs during employment there is a presumption of compensability, such presumption can be rebutted if there is substantial evidence that shows the death was not work related. (see Workers' Compensation Law §21 [1]; Matter of Frederick v Lindenhurst Union Free School Dist., 66 AD3d 1104, 1105 [2009]). The Court determined that the presumption was rebutted by the decedent's death certificate and the carrier's cardiologist's testimony. The death certificate indicated sudden cardiac death was due to coronary arteriosclerosis, with significant contributing factors being smoking and hypertension. The carrier's cardiologist testified, after reviewing the decedent's medical records, that decedent's death was caused by progressive atherosclerosis, a preexisting condition independent of his work. Such evidence effectively rebutted the presumption of compensation and shifted the burden of proof to the claimant (see

Matter of Puig v New York Armenian Home, Inc., 65 AD3d 1444, 1445-1446 [2009]). However, claimant did not present any medical evidence to contradict the findings of carrier's medical expert or the death certificate. Therefore, the Board's decision should not be disturbed.

*Stewart, Greenblatt, Manning & Báez*