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Supreme Court, Appellate Division, Third Department, New York

Matter of LAVERNE TAYLOR, Claimant-Appellant
v
LITTLE ANGELS HEAD START et al., Respondents,
and
WORKERS' COMPENSATION BOARD, Respondent

Decided September 6, 2018

Facts: The claimant had worked for the employer until February 2013, when she was placed on medical leave due to a bilateral knee condition. The claimant attributed the worsening of this pre-existing condition to her job duties, but her physicians did not state it was causally related. Over one year later, she filed for workers' compensation benefits alleging repetitive stair climbing and walking between job sites. The Worker's Compensation Law Judge established the claim, but the Board reversed, finding the claimant failed to give timely notice. This appeal ensued.

Holding: *Affirmed.*

Discussion: Workers' Compensation Law § 18 requires that a claimant seeking workers' compensation benefits must provide written notice of an injury within 30 days after the accident causing such injury. The failure to give timely notice generally precludes a claim unless the Board excuses the failure on the ground that notice could not be given, the employer or its agent had knowledge of the accident or the employer did not suffer any prejudice. The Board is not required to excuse a claimant's failure to give timely written notice even if one of these grounds is proven; the matter rests within the Board's discretion. Here the Court found that while the employer was aware of a problem with the knees, the claimant testified to not giving notice that it was work related until June 2014, and the medical records stated the condition occurred without any known injury, so the record

does not support the claim that the employer had knowledge of the work-related injury. The record also supports the Board's finding that the employer was prejudiced by the delay due to the worsening of the claimant's symptoms over time. Therefore, the Board did not abuse its discretion in failing to excuse the untimely notice.

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