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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

ARTURO SANTOS, Appellant

v

BRICKENS CONSTRUCTION, INC., Respondent

and

WORKERS' COMPENSATION BOARD

Decided September 26, 2019

Facts: The claim was established for an injury to the back and the claimant was classified PPD in 2007. Indemnity payments were suspended in November 2016 when the claimant was found unattached to the labor market. This decision was upheld on appeal. WCL Section 15(3)(w) was amended in April 2017 to find that PPD claimants did not have to demonstrate a continued attachment to the labor market. The claimant reopened the claim and the WCLJ found the claimant entitled to benefits. The Board Panel rescinded the award stating that the amendment did not apply retroactively.

Holding: Affirmed.

Discussion: In matter of Scott v. Visiting Nurses Home Care, the Court recognized that the amendment does not necessarily retroactively apply to all PPD claimants. The amendment does NOT apply to a claimant who has been previously classified PPD and also found unattached from the labor market. The Board has retroactively reinstated benefits in cases where there had been no final determinations regarding labor market attachment and there has been a finding that the claimant's withdrawal from the labor market was involuntary (Matter of O'Donnell v. Erie County 162 AD3d at 1281). This case was similar to Scott and as such, benefits were not reinstated.

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