

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT**

Southard v. Corning Hotel Corp.

95 A.D.3d 1519, 944 N.Y.S.2d 773 (3d Dep't 2012) · Decided May 17, 2012

SUMMARY

The New York Appellate Division affirmed a Workers' Compensation Board decision discharging the Special Disability Fund from liability under Workers' Compensation Law § 15 (8) (d). The court held that the employer failed to show that the claimant's preexisting arteriovenous malformation materially and substantially increased the disability or compensation liability beyond that caused by her work-related lumbar spine injury.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Kavanagh, J.; Spain, J.E.; Stein, J.; McCarthy, J.; Egan Jr., J.
JURISDICTION	New York
DECIDED	May 17, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The employer and its workers' compensation carrier appealed from a Workers' Compensation Board decision discharging the Special Disability Fund from liability under Workers' Compensation Law § 15 (8) (d).
STANDARD OF REVIEW	Whether substantial evidence supported the Workers' Compensation Board's determination that the employer failed to establish the statutory requirements for Fund reimbursement.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Employer and workers' compensation carrier v. Special Disability Fund

TOPICS

workers compensation

judicial review of agency action

administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the employer established that claimant's preexisting arteriovenous malformation materially and substantially increased the disability and compensation liability beyond that resulting from the April 2004 work-related injury alone, as required for reimbursement from the Special Disability Fund under Workers' Compensation Law § 15 (8) (d).
2. Whether the Workers' Compensation Board properly discharged the Special Disability Fund from liability.

HOLDINGS

1. The employer failed to prove that claimant's preexisting condition caused a permanent disability materially and substantially greater than the disability caused by the April 2004 work-related injury alone; therefore, reimbursement from the Special Disability Fund was unavailable.

KEY QUOTATIONS

“To obtain reimbursement from the Fund, an employer must establish “that the claimant had a preexisting permanent impairment that hindered job potential, a subsequent injury arising out of and in the course of employment, and a permanent disability caused by both conditions materially and substantially greater than what would have been caused by the work-related injury alone”” (95 A.D.3d at 1519)

“The mere fact that the sum of the disabilities is materially greater than the subsequent disability alone is not sufficient to hold the . . . Fund liable” (95 A.D.3d at 1520)

FACTUAL BACKGROUND

In April 2004, claimant sustained a work-related injury to her back and left hip and received workers' compensation benefits. She had a preexisting arteriovenous malformation for which she underwent brain surgery in 1999, but continued to experience migraine headaches that occasionally caused her to miss work. Although the employer's medical expert characterized the combined conditions as a materially and substantially greater permanent disability, the expert also stated that claimant's headaches did not increase her overall disability, and claimant testified that she did not need to change her job duties.

PROCEDURAL HISTORY

Claimant was awarded workers' compensation benefits after a work-related back and left-hip injury. The employer and carrier sought reimbursement from the Special Disability Fund based on claimant's preexisting arteriovenous malformation. The Workers' Compensation Board found that the statutory requirements were not met and discharged the Fund from liability; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Sturtevant v. Broome County, 188 A.D.2d 893, 893-94 (1992)
- Matter of Burley v. Theriault Transp., 85 A.D.3d 1423, 1424 (2011)
- Matter of Brown v. Guilderland Cent. School Dist., 82 A.D.3d 1523, 1523 (2011)
- Matter of Saletta v. Allegheny Ludlum Steel Corp., 62 A.D.2d 360, 362 (1978), lv. denied, 45 N.Y.2d 711 (1978)
- Matter of Eimers v. Lee's Rest., 162 A.D.2d 850, 852 (1990)

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