

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

Matter of Kelsey v. Dean Transp.

2023 NY Slip Op 05016 (N.Y. Ct. App. 2023) · No. CV-22-1987 · Decided October 5, 2023

SUMMARY

The Appellate Division, Third Department affirmed a Workers' Compensation Board decision awarding Jeffery Kelsey temporary total disability benefits related to work-related hernias and consequential bowel obstruction. The court held that, absent a finding that Kelsey voluntarily withdrew from the labor market, he was not required to demonstrate labor-market attachment, and the Board's determination was supported by substantial evidence.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Egan Jr., J.; Aarons, J.; McShan, J.
JURISDICTION	New York
DECIDED	October 5, 2023
DOCKET	CV-22-1987
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer and its workers' compensation carrier appealed a Workers' Compensation Board decision awarding claimant temporary total disability benefits for compensable lost time beginning June 21, 2019 and continuing, subject to apportionment.
STANDARD OF REVIEW	The Board's factual determination concerning voluntary withdrawal from the labor market is reviewed for substantial evidence. The Board's determination of entitlement to benefits is likewise sustained when supported by substantial evidence in the record.
PRECEDENTIAL VALUE	published
PARTIES	Dean Transportation et al., Employer and workers' compensation carrier v. Jeffery Kelsey, Workers' Compensation Board

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board could award claimant temporary total disability benefits without requiring proof of attachment to the labor market.
2. Whether substantial evidence supported the Board's finding that claimant was overall totally disabled as a result of his work-related injuries.
3. Whether the carrier's reliance on *Matter of Bacci v Staten Is. Univ. Hosp.* required denial of total disability benefits.

HOLDINGS

1. Claimant was not required to establish attachment to the labor market because the Board made no finding that he voluntarily withdrew from the labor market, and its finding of overall total disability implicitly established that any withdrawal was involuntary.
2. The Board's determination that claimant was entitled to awards for the period at issue was supported by substantial evidence.

KEY QUOTATIONS

"Whether a claimant has voluntarily withdrawn from the labor market is a factual issue for the Board to resolve and, if supported by substantial evidence in the record, the Board's resolution of that issue will not be disturbed" (*2)

"Withdrawal from the labor market 'is involuntary when the claimant's disability caused or contributed to the [withdrawal]'" (*2)

FACTUAL BACKGROUND

Claimant had multiple work-related hernias arising from accidents in 2002, 2004, 2011, and 2016, with the 2011 claim later amended to include consequential bowel obstruction. After recurrent hernia repairs and hospitalizations for bowel obstruction, claimant's occupational medicine physician opined that he was temporarily totally disabled from returning to work. Although that opinion was initially deemed insufficient to support amendment of the claim, the Workers' Compensation Law Judge later credited it in light of additional supporting medical opinions and awarded benefits beginning June 21, 2019.

PROCEDURAL HISTORY

Claimant sought further action on a 2011 workers' compensation claim and requested reinstatement of lost-time awards. After additional hearings and medical evidence, a Workers' Compensation Law Judge amended the

claim to include consequential bowel obstruction, barred awards before June 21, 2019 based on laches, and awarded temporary total disability benefits thereafter. The Workers' Compensation Board affirmed, and the employer and carrier appealed to the Appellate Division, Third Department.

DISPOSITION

affirmed

CASES CITED

- Matter of Bacci v. Staten Is. Univ. Hosp., 32 A.D.3d 582 (3d Dep't 2006)
- Matter of O'Rourke v. Consolidated Edison Co. of N.Y., 77 A.D.3d 1031, 1031-1032 (3d Dep't 2010)
- Matter of Schirizzo v. Citibank NA-Banking, 128 A.D.3d 1293, 1294 (3d Dep't 2015)
- Matter of Lombardo v. Otsego County Empls., 125 A.D.3d 1079, 1080 (3d Dep't 2015)
- Matter of Poulard v. Southside Hosp., 177 A.D.3d 1234, 1236 (3d Dep't 2019)
- Matter of Tomaine v. City of Poughkeepsie Police, 178 A.D.3d 1256, 1258 (3d Dep't 2019)

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