

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

Claim of Lauritano v. Consolidated Edison Co.

59 A.D.3d 757 (N.Y. App. Div. 2009) · Decided February 5, 2009

SUMMARY

The Appellate Division affirmed the Workers’ Compensation Board’s determination transferring liability to the Special Fund for Reopened Cases under Workers’ Compensation Law § 25-a. It held that wages paid under the employer’s sick-leave plan, which covered disability regardless of its cause, were not payments of compensation that would prevent transfer of liability. The court also rejected the argument that all payments by a self-insured employer constitute compensation.

CASE DETAILS

|                       |                                                                                                                                                                                    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, Third Department                                                                                                 |
| WRITING FOR THE COURT | Mercure, J.P.; Peters, J.; Kane, J.; Malone Jr., J.; Stein, J.                                                                                                                     |
| JURISDICTION          | New York                                                                                                                                                                           |
| DECIDED               | February 5, 2009                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                           |
| PROCEDURAL POSTURE    | The Special Fund appealed from a Workers' Compensation Board decision transferring liability for the reopened claim to the Special Fund under Workers' Compensation Law § 25-a.    |
| STANDARD OF REVIEW    | Whether Workers' Compensation Law § 25-a applies is an issue of fact for the Workers' Compensation Board, whose determination must be upheld if supported by substantial evidence. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                          |
| PARTIES               | Special Fund for Reopened Cases v. Claimant, Consolidated Edison Co.                                                                                                               |

TOPICS

- workers compensation
- administrative law
- judicial review of agency action

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether liability for the reopened workers' compensation claim transferred to the Special Fund under Workers' Compensation Law § 25-a.
2. Whether wages paid under the employer's sick-leave plan during the claimant's 1999 and 2000 absence constituted payments of compensation that prevented transfer of liability to the Special Fund.

## HOLDINGS

1. The Board properly determined that liability transferred to the Special Fund because the payments made to the claimant during his 1999 and 2000 absence were sick-leave wages, not payments of workers' compensation.
2. Payments made by a self-insured employer are not automatically payments of workers' compensation for purposes of Workers' Compensation Law § 25-a.

## KEY QUOTATIONS

*“wages that are paid pursuant to a sick-leave plan which covers disability irrespective of the cause do not constitute advance payments of compensation for purposes of Workers’ Compensation Law § 25-a” (759)*

## FACTUAL BACKGROUND

The claimant suffered a work-related heart attack in June 1992 and received workers' compensation benefits until September 1992. He received an additional award for intermittent lost time between 1992 and 1997, and the case was then closed. After a second heart attack and bypass surgery in 1999, he was absent from work for four months and received wages under his employer's sick-leave plan during 1999 and 2000, regardless of the cause of his absence.

## PROCEDURAL HISTORY

The claimant's workers' compensation case was closed after an award for intermittent lost time through 1997. After the claimant suffered another heart attack and underwent bypass surgery in 1999, the claim was reopened in 2001. A Workers' Compensation Law Judge found that the claim was not stale and that liability should not transfer to the Special Fund. The Workers' Compensation Board reversed and transferred liability to the Special Fund, and the Appellate Division affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Matter of Fuentes v. New York City Hous. Auth., 53 A.D.3d 873 (2008)
- Matter of Marshall v. Roth Bros. Smelting Corp., 55 A.D.3d 1189 (2008)

- Matter of Faison v. City of N.Y. Dept. of Human Resources, 24 A.D.3d 829 (2005), lv. dismissed, 7 N.Y.3d 783 (2006)
- Matter of Brock v. Great A&P Tea Co., 84 A.D.2d 645 (1981), appeal dismissed, 56 N.Y.2d 593 (1982)

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