

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

Matter of Zaremski v. New Visions

136 A.D.3d 1176 (N.Y. App. Div. 2016) · No. 520654 · Decided February 18, 2016

SUMMARY

The New York Supreme Court, Appellate Division, Third Department reversed a Workers' Compensation Board decision denying James Zaremski reduced-earnings benefits after January 22, 2013. The court held that the Board failed to explain its departure from prior precedent concerning consideration of earnings from noncovered self-employment and remitted the matter for further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Peters, P.J.; Garry, J.; Egan Jr., J.; Rose, J.; Clark, J.
JURISDICTION	New York
DECIDED	February 18, 2016
DOCKET	520654
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed from a Workers' Compensation Board decision denying entitlement to reduced-earnings benefits after January 22, 2013.
STANDARD OF REVIEW	The court reviewed whether the Board's decision was arbitrary because it departed from prior Board precedent without explaining the reasons for the departure.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	James Zaremski v. New Visions, Travelers Insurance, Workers' Compensation Board

TOPICS

workers compensation

administrative law

appellate procedure

standard of review

PRACTICE AREAS

workers compensation

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appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board acted arbitrarily by departing from its prior precedent concerning the consideration of wages from noncovered concurrent employment in calculating reduced earnings without explaining the departure.
2. Whether claimant's self-employment constituted covered concurrent employment under Workers' Compensation Law § 14 (6).

HOLDINGS

1. The Board's decision was arbitrary because it departed from prior Board precedent regarding the treatment of wages from noncovered concurrent employment without explaining the reasons for the departure.
2. Under the Board's prior precedent, wages from noncovered concurrent employment may not be included in calculating average weekly wages under Workers' Compensation Law § 14 (6), but must be taken into account when computing reduced earnings under Workers' Compensation Law § 15 (5-a).

KEY QUOTATIONS

"A decision of the Board will be deemed arbitrary "if it departs from prior Board precedent and fails to explain the reasons for its departure"" (136 A.D.3d at 1177)

FACTUAL BACKGROUND

In January 2012, James Zaremski injured his lower back while working as a general maintenance repairperson and did not return to that employment. He also operated a self-owned appliance-repair business, which he resumed part-time in June 2012 with physical restrictions. The Workers' Compensation Law Judge calculated tentative reduced earnings based on the difference between his former average weekly wage and his post-injury earnings from self-employment.

PROCEDURAL HISTORY

Claimant sustained a lower-back injury and sought workers' compensation benefits based on reduced earnings after returning part-time to his self-owned appliance-repair business. A Workers' Compensation Law Judge awarded tentative reduced earnings of \$300 per week. The Workers' Compensation Board modified that determination and ruled that claimant had no compensable reduced-earnings claim after January 22, 2013. The Appellate Division reversed and remitted for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to the Workers' Compensation Board for further proceedings not inconsistent with the court's decision.

CASES CITED

- Matter of Dicob v AMF Bowling, Inc., 77 AD3d 1034, 1036 [2010]
- Matter of Charles A. Field Delivery Serv. [Roberts], 66 NY2d 516, 520 [1985]
- Matter of Winters v Advance Auto Parts, 119 AD3d 1041, 1042 [2014]
- Employer: NYC Bd. of Educ., 2005 WL 3087684, *2, 2005 NY Wrk Comp LEXIS 9711, *4 [WCB No. 0031 7094, Nov. 4, 2005]
- Employer: Genesee Region Home Care, 2004 WL 2107404, *2, 2004 NY Wrk Comp LEXIS 13982, *4-5 [WCB No. 7011 3900, Sept. 17, 2004]
- Matter of Hills v New York City Bd. of Educ., 133 AD3d 1079, 1081 [2015]
- Matter of Ramadhan v Morgans Hotel Group Mgt., LLC, 91 AD3d 1141, 1141-1142 [2012]

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