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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Argenis OSIRIO, Claimant,
v.
TVI INC. et al., Appellants,
WORKERS' COMPENSATION BOARD, Respondent.

April 8, 2021

Facts: Claimant filed a claim for repetitive stress injuries to the neck, back and both arms caused by working on clothes racks at work. Prima facie medical evidence was found for the neck and both shoulders. Carrier alleged that claim was time barred as claimant first reported symptoms in 2012 but did not file claim until 2015. Following a trial, the claim was established as an occupational disease involving the cervical spine and both shoulders with a date of disablement of May 21, 2015, corresponding with an initial physical examination with an orthopedic surgeon. On appeal, the WCLJ decision was affirmed by the Board. The carrier's request for full Board review was denied.

Holding: *Affirmed.*

Discussion: The Board has great latitude in determining a date of disablement. Relevant dates include the first day of causally related treatment, the date on which the claimant first received a diagnosis indicating that the condition was work related, the date on which the claimant began to lose time from work due to the work-related disability, the date on which the claimant was advised by a physician to stop working due to a work-related disability and the date on which the claimant actually stopped working because of that disability. The Board is not bound to select the earliest possible date of disablement nor is it required to give preference to certain events over others. The Board opted for the date of the claimant's first examination at which a doctor opined that the condition was work related. The Court found there was substantial evidence to support the decision and no basis to

change the decision. The Court also found that the Board was not in error by denying full Board review because the standards for such review had not been satisfied.

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