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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of JERRY WAYNE MOORE, Appellant,  
v.  
U.S. XPRESS INC., Respondents

WORKERS' COMPENSATION BOARD, Respondent.

January 6, 2022

Facts: This claim was disallowed as not arising in the course of employment. After the claimant appealed, the Board Panel affirmed, and a further Application for Reconsideration/ Full Board Review was also denied. The claimant appeals *pro se* to the Appellate Division.

Holding: *Affirmed.*

Discussion: Whether an accident arises in the course of employment is a factual issue left to the Board's discretion. Here, the claimant, a truck driver, alleged he felt a sharp pain in his back unloading his truck, but he continued to unload the truck and did not report the incident. The employer testimony was that when the claimant asked for the four days off, he stated that he had *not* been hurt at work but needed time off to address an ongoing issue with his back. After he stopped working and was medically cleared to return to work, he did not. The claimant's surgeon testified that the emergency surgery he underwent was likely the result of an infection and not trauma. In terms of denying the request for reconsideration the claimant presented no new evidence.