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Supreme Court, Appellate Division, Third Department, New York

In the Matter of CHRISTOPHER BODISCH, Appellant  
v.  
NEW YORK STATE POLICE et al, Respondents  
WORKERS' COMPENSATION BOARD, Respondent

Decided June 17, 2021

Facts: Appeal from decision of Workers' Compensation Board which ruled that claimant was not a participant in the World Trade Center rescue, recovery and cleanup operations and denied his claim for Workers' Compensation benefits.

The claimant, a state trooper, was assigned to a vehicle checkpoint at the intersection of West Street and Canal Street from January 31, 2002 to February 6, 2002. The claimant registered his participation in the World Trade Center rescue, recovery and cleanup operations in 2007. The claimant filed a claim for Workers' Compensation benefits in 2018 citing alleged exposure to toxins at the World Trade Center site. A Judge found, after a hearing, the claimant's activities were covered by Workers' Compensation Law Article 8-A and established the claim. An Appeal was filed, and the Board reversed finding the claimant's job activities were not covered by Workers' Compensation Law Article 8-A as he was not a participant in the World Trade Center rescue, recovery and cleanup operations. The Board disallowed the claim as it treated the claim as an accident and found that it was time barred under Section 28. The Board noted the claimant's injuries derived from an environmental condition specific to the place of work and not the nature of his employment.

Holding: *Modified; finding disallowing claim as untimely under Section 28 reversed; matter remitted to Workers' Compensation Board for further proceedings.*

Discussion: The Court found an occupational disease derives from the varying nature of the employment, not a specific condition peculiar to the employee's place of work nor from an environmental condition specific to the place of work. To establish an occupational disease, a claimant must demonstrate a recognizable link between his or her condition and a distinctive feature of his or her employment. In this case, the basis of the claim alleged the claimant's injuries resulted from his work-related exposure to toxic substances during the rescue, recovery and cleanup operation following the World Trade Center terrorist attack. The Court found that the alleged disability arose from a specific condition peculiar to the claimant's place of work and not from a distinctive feature of his employment as a state trooper. The Court held the Board's finding the claimant did not meet the requirements of an occupational disease is supported by substantial evidence. The Court also discussed the applicability of Article 8-A. It noted the Board required the injured claimant directly participate in or otherwise have some tangible connection to the rescue, recovery or cleanup operation to fall under Article 8-A of the Workers' Compensation Law. The Court noted that based on the claimant's testimony of providing assistance at checkpoints as well as with respect to traffic and clearing routes for emergency and construction vehicles, the claimant's activity had a tangible connection to the rescue, recovery and cleanup operations at the World Trade Center site. In this case, the Court found that the Board's determination that this claim did not fall under Article 8-A was not supported by substantial evidence and therefore, the claim should not have been disallowed as untimely under Workers' Compensation Law Section 28.

Stewart, Greenblatt, Manning & Poel