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Supreme Court, Appellate Division, Third Department, New York

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of MARIA FIERRO-SCHWEITZER, Appellant

v.

WORLD TRADE CENTER VOLUNTEER FUND, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

July 7, 2022

Facts: This is an appeal from a decision that disallowed the claimant's claim for Workers' Compensation death benefits. The claimant's spouse who is the decedent, was a member of the New York City Fire Department who, after an injury on the job, retired on a disability pension in the late 1990s. The decedent died in March of 2018. In July of 2018, the decedent's spouse filed a claim for death benefits asserting that the decedent had died from metastatic kidney cancer caused by exposure to toxins while volunteering and aiding in the rescue and recovery efforts at Ground Zero in the wake of the September 2001 terrorist attacks. There was an assertion that the decedent volunteered for ninety nine hours over the course of five days in September 2001 and a letter from a physician was proffered opining, after review of the decedent's medical records, that the decedent's efforts as a volunteer increased his risk for the development of renal cell carcinoma which resulted in the decedent's death. After several hearings, the Workers' Compensation Judge disallowed the claim, noting that because the decedent's alleged exposure to toxic chemicals resulted from volunteer work, any resulting claim necessarily

fell within the purview of Article 8-A and absent the decedent's completion of the required WTC-12 registration form in his lifetime, the Judge reasoned that the claimant's subsequent claim for death benefits could not stand. An appeal was filed, and an assertion made that the death claim did not fall under Article 8-A and the decedent's failure to comply with registration provisions should not preclude the death claim filed under Section 16. The Judge's decision disallowing the claim was affirmed by the Board and the claimant appeals.

Holding: *Affirmed.*

Discussion: The Court noted the Board has consistently held that the required registration form must be filled out by the actual participant and not the participant's surviving spouse. It is undisputed in the instant case the decedent did not file the required WTC-12 registration form in lifetime. The Board has made it clear that, in the absence of proper filing of the form, there is no basis for a claim under Workers' Compensation Law Article 8-A. The Court noted that while the claimant in this claim is not asserting a claim under Article 8-A but rather under Section 16 of the Workers' Compensation Law, the Court found a flaw in the claimant's argument as there still must be a basis for the claim and an entity upon which liability may be imposed (Section 10). The Court noted that there needed to be a legal basis for the claimant's claim in the first instance and in the case at bar, there simply was not. The decedent had no employer at the time of his alleged exposure and participated in the rescue, recovery and cleanup as a volunteer. The Court found that there was no claim for death benefits inured under Workers' Compensation Law Section 16 in the instant matter. Therefore, the disallowance of the claim was upheld.