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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of BERNADETTE SILVESTRI, Respondent,

v.

NEW YORK CITY TRANSIT AUTHORITY, Appellant,

and

WORKERS' COMPENSATION BOARD, Respondent.

August 10, 2017

Facts: Decedent was employed as a maintenance worker for a municipal transit authority. After he completed his normal shift he was found in bed by his wife (the claimant in the resulting death claim) complaining of various physical injuries and told her that he fell into "the pit." The decedent was taken to the hospital on two occasions and eventually died as a result of complications from these injuries.

The claimant then filed two claims (a disability claim and death claim) which were controverted. The Law Judge established the claims and the Board affirmed. This appeal ensues.

Holding: *Affirmed*

Discussion: The Court held that the Board incorrectly applied the presumptions of WCL §21 in as much as the issue is whether the claimant was performing his job when the fatal injuries occurred, which is dispositive of whether the injuries arose out of and in the course of his employment. WCL §21 presumptions cannot be used to show that an injury occurred.

There were no witnesses to the accident, but the decedent was observed by his supervisor, who testified, to be holding his stomach. In addition, it was determined through testimony, that the decedent sometimes had to work over a pit.

The Court held that the decedent's statement to the claimant about how the accident occurred is admissible under WCL §118 and is the best evidence about what happened. Therefore, the Board's determination regarding the compensability of the claim is based on substantial evidence and will not be disturbed.

*Stewart, Greenblatt, Manning & Báez*