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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Matter of Delynn Turner, Claimant

v.

NYC Dept. of Juvenile Justice, Appellant
Workers' Compensation Board, Respondent

Decided March 22, 2018

Facts: The claimant was a counselor at a juvenile detention facility. A 2001 claim was established to the back and left pinky. A 2005 claim, which resolved in a schedule loss of use award, was established to the neck, back and left shoulder. The claimant had a motor vehicle accident three months after her 2005 accident and the Board ruled the claimant's two subsequent 2009 back surgeries were causally related to her 2005 workers' compensation accident. Of note, the claimant did not produce all the medical records and pleadings related to the motor vehicle accident as directed. The Board Panel reversed, finding no causally related disability. This appeal ensued.

Holding: Affirmed.

Discussion: Substantial evidence supported the Board's decision to find the claimant's 2009 back surgeries unrelated to her work-related accident. The claimant's physician did not review any records pertaining to the motor vehicle accident. The claimant did not disclose the motor vehicle accident to the carrier's consultant initially, and the carrier's consultant reviewed some records from the motor vehicle accident. The Board found the claimant's testimony that she only injured her knee in the motor vehicle accident incredible and properly drew a negative inference from the claimant's failure to produce pleadings. The Court noted the 2005 worker's compensation claim having closed in a schedule loss of use award suggests the claimant's back injuries resolved well before her 2009 surgeries.