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Supreme Court, Appellate Division, Third Department, New York

Matter of AGNES XIE, Appellant
v
JP MORGAN CHASE, Respondent
and
WORKERS' COMPENSATION BOARD

Decided May 4, 2017

Facts: The claimant was a bank executive and spent much of her time working at a computer station. According to claimant, she began experiencing pain in her neck, back and shoulder due to the placement of the chair and keyboard at her work station. She was terminated in December of 2013 and filed a claim in March of 2014. Notices of indexing were issued in March and April of 2014. The carrier filed SROI-04 over a month later controverting the claim. Ultimately, the WCLJ disallowed the claim under §18, and also cited to a lack of evidence linking claimant's injuries to her employment. On Appeal, the Board affirmed, finding that claimant's injuries did not arise out of and in the course of her employment. The claimant appealed.

Holding: *Affirmed*

Discussion: The claimant initially argued that the employer should be precluded under §25(2)(b) from raising a §18 defense because the carrier did not file its notice of controversy within 25 days. However, since this argument was not raised until this appeal, it was not preserved for the Court's review. Also, there were emails submitted by the claimant upon appeal to the Court which purport to prove that the employer had timely notice of her work-related condition. However, these emails did not indicate that the claimant informed the facility coordinator of the specific injuries claimant allegedly sustained, and the employer's witnesses stated that they were not notified of such injuries. The Board's decision denying this

claim was based upon its assessment of witness credibility, which is within its purview and should be affirmed.

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