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Grey & Grey Posts Four Wins on Appeal in Six Months

- July, 2018

If you disagree with the decision of a Workers' Compensation Law Judge, you can ask the Workers' Compensation Board to review his or her decision. This type of appeal is called an "Application for Board Review." The judge's decision is then reviewed by a panel of three Commissioners, who may uphold, reverse, or change the decision. These are called Board Panel decisions.

If you disagree with the Board Panel decision, there are two options: ask the Full Board to review the decision (which is rarely granted unless one of the Commissioners on the Board Panel dissented); or appeal to the courts – more specifically to the Appellate Division, Third Department.

The Appellate Division will only reverse the Board if its decision was either (1) wrong on the law; or (2) there is no view of the evidence that supports it. Because the standard for review is so high – in addition to the time, expense and expertise required to do appellate work – most workers' compensation law firms will not pursue appeals for their clients.

Grey & Grey is different. When the Workers' Compensation Board makes a decision that is clearly wrong on the law or is not supported by the evidence, we don't hesitate to take our client's fight to the Appellate Division. On the "Appellate Victories" page of our web site, you'll find that we've done so more than 150 times. No other law firm comes close.

We won four appeals in the first half of 2018 alone, ranging from a $150 penalty that the Board wrongfully imposed to a landmark decision that will change the law for thousands of injured workers. You can find more information and links to the full decisions on the Appellate Victories page, but here is a brief description of this year's successful appeals:

Kaplan v New York City Transit Authority: The WCL Judge found that because the transit worker collapsed and died in the employer's locker room at the end of his shift, his death was caused by the work and his widow was entitled to death benefits. The Board Panel reversed, finding that medical records in another file indicated that he died because of pre-existing heart problems. We appealed, and the Appellate Division reversed the Board, holding that it was improper for the Board to locate and use evidence in its decision without notice to our client, and also that she was entitled to the benefit of a legal presumption that a death occurring during the job was caused by the work.

Taher v. Yiota Taxi: The WCL Judge found that because our client had a permanent disability to his neck and back, he was not entitled to any compensation for permanent injuries to his arm and leg – even though he was back to work at full wages and would be paid no compensation for his neck and back injuries. A Board Panel upheld this decision, which was consistent with the Board's medical guidelines and longstanding practice. We appealed, and in a landmark opinion the Appellate Division ruled that if our client was not entitled to compensation for his neck and back injuries, those injuries could not be used to deny him compensation for his arm and leg injuries. This groundbreaking decision will result in compensation payments to thousands of workers who would otherwise have received nothing for their injuries.

Nock v. New York City Dept of Education: The WCL Judge found that our client had submitted a medical report that was adequate for her to pursue her case, and later decided the case in her favor after trial. A Board Panel reversed the Judge – and proceeded to dismiss the case for lack of medical evidence. We appealed, and the Appellate Division held that having found that the injured worker's medical evidence was adequate, the Board could not later change its mind and dismiss her case without at least giving her the opportunity to submit a new report.

Murtha v. Verizon N.Y., Inc.: The WCL Judge refused to consider medical reports filed by our client's treating doctors because they did not appear to testify – and penalized our firm for trying to argue the client's case. A Board Panel agreed that we could not be penalized for trying to represent our client – but instead imposed a different penalty because it believed it was the worker's obligation to produce his doctors for testimony. We appealed, and the Appellate Division reversed, finding that the Board cited the wrong part of the law, and that even if it had cited the correct part of the law it was the responsibility of the insurance company, not the injured worker or the worker's lawyer, to subpoena doctors for testimony. This decision may have far-reaching implications and help injured workers across the state by making certain their doctor's reports are considered even if the doctor does not testify.