



Kenneth J. Munnelly
Chair

ADMINISTRATIVE REVIEW DIVISION
WORKERS' COMPENSATION BOARD
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BINGHAMTON, NY 13902
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State of New York - Workers' Compensation Board
In regard to Mohammed Anwar, WCB Case #G165 5355

MEMORANDUM OF BOARD PANEL DECISION

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Opinion By: Fredrick M. Ausili
Steven A. Crain
Samuel G. Williams

The claimant requests administrative review of the Workers' Compensation Law Judge (WCLJ) decision filed on March 10, 2017. The carrier timely filed a rebuttal.

ISSUE

The issue presented for administrative review is whether the claim was properly disallowed.

FACTS

This is a controverted claim wherein the claimant, a boro taxi driver, was driving a street hail when involved in a motor vehicle accident (MVA). The claimant contends that he has sustained work related injuries to the neck, back, right shoulder, left wrist, and right knee, sustained in an accident on April 20, 2016.

The Board's enforcement report indicates that the car the claimant drove was licensed to R Transport. The street hail permit holder is "Mr. Y."

By decision filed on March 10, 2017, the WCLJ disallowed the claim. Prima facie medical evidence was found for the neck, back, left shoulder, left wrist, and right knee per Dr. Bleicher.

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Claimant -	Mohammed Anwar	Employer -	R Transport
Social Security No. -		Carrier -	Hereford Ins. Co. ILDBF
WCB Case No. -	G165 5355	Carrier ID No. -	W999002
Date of Accident -	04/20/2016	Carrier Case No. -	LDF00611
District Office -	NYC	Date of Filing of this Decision -	09/08/2017

ATENCION:

Puede llamar a la oficina de la Junta de Compensacion Obrera, en su area correspondiente, cuyo numero de telefono aparece al principio de la pagina y pida informacion acerca de su reclamacion(caso).

The WCLJ found the claim not compensable under Executive Law § 160-ddd. The claimant was not a victim of a crime. The claimant's injuries were not catastrophic in nature as required by the law.

LEGAL ANALYSIS

The claimant argues that he is a green cab driver and is covered under the no-fault insurance carrier. The Executive Law § 160-ddd does not apply to the boro taxi. The street hail permit holder is obligated to have Workers' Compensation coverage separate from the Independent Livery Driver Benefit Fund (ILDBF). Therefore the claimant requests that the case be reopened and returned to the trial calendar for development of the record on the issue of compensability.

The ILDBF maintains that it is not responsible for a hail cab and therefore the decision was correct. A livery driver that is not dispatched is covered by Workers' Compensation that the owner of the cab is required to maintain. Therefore the decision that ILDBF is not responsible must be upheld regardless of any other ruling.

12 NYCRR 309.3(a)(3) states that,

"Workers' compensation benefits shall be provided by the [NYILDBF] for independent livery drivers dispatched by independent livery bases for deaths [and] injuries arising out of and in the course of providing covered services either: (i) resulting from a crime committed against such livery driver as evidenced by a police report; or (ii) resulting in [certain] conditions [specified in the regulation]" (12 NYCRR 309.3[a][3]).

12 NYCRR 309.3(a)(4) further states that,

"Workers' compensation benefits shall not be provided by the [NYILDBF] if the independent livery driver was not performing covered services or was in violation of the rules and regulations of the governing taxi and limousine commission regarding the solicitation or picking up of passengers at the time the crime was committed against him or her or when his or her death or injury occurred."

Where the claimant was involved in an accident while transporting a passenger who had been picked up as a street hail, the claim could not be established pursuant to 12 NYCRR 309.3(a)(3) and (4) because the claimant was not "providing a 'covered service,' as that term is specifically

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defined in the regulations, when he was involved in the accident, since the passenger was not in the claimant's [car] pursuant to a dispatch from the base" (Matter of Josan Enterprise, Inc., 2012 NY Wrk Comp G0321651).

The Workers' Compensation Subject No. 46-552 states that,

"Bases are allowed to provide Workers' Compensation protection for their affiliated drivers through membership in the ILDBF. This fund provides coverage for limited catastrophic injuries and injuries due to a crime, but only while the driver is on a dispatched call from a base. All other injuries are eligible for no-fault benefits through an automobile liability policy.

Due to these limitations, drivers performing street-hail services in Boro Taxis cannot be covered for Workers' Compensation benefits through the ILDBF. If the base that the driver affiliates with is a member of the ILDBF, the ILDBF will cover the driver only while he is on a dispatched call from that base, but not while performing street-hail services. Additional compensation coverage is required because of this gap in coverage."

The Board Panel finds that with regard to the ILDBF, there is no liability. The ILDBF covers the driver when on a dispatched call and not a street hail. This claim involves a street hail. The Board Panel further finds that the owner of the hail license is required to provide Workers' Compensation Insurance and that the issue of liability requires further development of the record.

Therefore the Board Panel finds, upon review of the record and based upon a preponderance of the evidence, the claim was disallowed prematurely.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on March 10, 2017, is RESCINDED. The ILDBF

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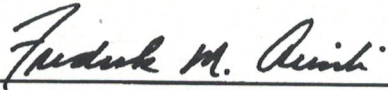
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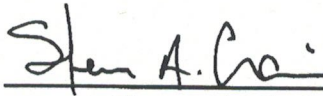
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is not liable for this claim. The case is reopened and returned to the trial calendar for further development of the issues.

All concur.



Fredrick M. Ausili



Steven A. Crain



Samuel G. Williams

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