

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 19, 2012

510546

In the Matter of the Claim of
GAUDENZIA HRONCICH,
Respondent,

AFFIRMED Board's decision that
death was causally related

v

MEMORANDUM AND ORDER

CON EDISON et al.,
Appellants,
and

SPECIAL DISABILITY FUND,
Respondent.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: November 14, 2011

Before: Mercure, Acting P.J., Rose, Lahtinen, Kavanagh and
McCarthy, JJ.

Steven M. Scotti, Consolidated Edison Company, New York
City, and Cherry, Edson & Kelly, Carle Place (David W. Faber of
counsel), for appellants.

Steven M. Licht, Special Funds Conservation Committee,
Albany (Jill B. Singer of counsel), for Special Disability Fund,
respondent.

Eric T. Schneiderman, Attorney General, New York City (Iris
A. Steel of counsel), for Workers' Compensation Board,
respondent.

Mercure, Acting P.J.

Appeal from a decision of the Workers' Compensation Board, filed December 18, 2009, which ruled that decedent's death was causally related to his occupational illness.

In 1993, Antonio Hroncich (hereinafter decedent) was diagnosed with asbestosis and asbestos-related pleural disease. He was ultimately found to have a permanent partial disability as a result of his occupational lung disease. He later developed thyroid cancer, which progressed into his lungs. He died in 2007 and claimant, his wife, filed this claim for death benefits, which was controverted by the employer. At the hearing on the claim, physician Lester Ploss testified that decedent's death was attributable 20% to his work-related illness and 80% to thyroid cancer. The Workers' Compensation Law Judge found that decedent's death was causally related to his work-related illness and that apportionment was not available. The Workers' Compensation Board affirmed.

The employer and its third-party administrator (hereinafter collectively referred to as the employer) appeal, arguing that claimant's death benefits should be apportioned in the same manner as decedent's lifetime benefits were apportioned. However, as the employer correctly notes, this Court rejected the identical argument in Matter of Webb v Cooper Crouse Hinds (62 AD3d 57 [2009]), explicitly holding that "apportionment is not available between work-related and non-work-related causes of death" (*id.* at 60). We are not persuaded by the employer's arguments urging us to re-examine and overrule Webb. Indeed, we reiterate that to the extent prior cases may contain language that could be read to suggest that apportionment may be appropriate under certain circumstances, those cases should not be followed (*see id.* at 60 n). Accordingly, inasmuch as the record concededly contains substantial evidence supporting the Board's determination that decedent's occupational illness contributed to his death, claimant is entitled to death benefits without apportionment.

Rose, Lahtinen, Kavanagh and McCarthy, JJ., concur.

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ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court