

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 12, 2012

512857

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In the Matter of the Claim of  
ELIZA JOHNSON,  
Respondent,  
v

REVERSED the Board's ruling that the carrier make a deposit into the ATF, by the Board's failure to "iterate the basis for doing so."

ANHEUSER BUSCH, INC., et al.,  
Appellants,  
et al.,  
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,  
Respondent.

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Calendar Date: November 15, 2011

Before: Spain, J.P., Lahtinen, Malone Jr., Stein and  
Egan Jr., JJ.

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Wolff, Goodrich & Goldman, L.L.P., Syracuse (Robert E. Geyer Jr. of counsel), for appellants.

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

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Malone Jr., J.

Appeal from a decision of the Workers' Compensation Board, filed November 3, 2010, which, among other things, directed the employer's workers' compensation carrier to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27 (2).

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In March 2004, claimant suffered work-related injuries and was awarded workers' compensation benefits. Thereafter, a Workers' Compensation Law Judge determined that, beginning in May 2005, claimant had a permanent partial disability of a moderate to marked degree and, pursuant to Workers' Compensation Law § 27 (2), directed the employer's workers' compensation carrier to make a mandatory deposit of the full present value of claimant's future benefits into the aggregate trust fund (hereinafter ATF). Upon appeal, the Workers' Compensation Board affirmed. After the Special Disability Fund conceded that it would be liable for reimbursement of 50% of the award (see Workers' Compensation Law § 15 [8]), the employer and the carrier sought rescission of the direction to deposit funds into the ATF. In light of the concession by the Special Disability Fund, the Board found that, while a deposit into the ATF by the carrier was no longer mandatory, it was nevertheless within its discretion to order the carrier to deposit the full amount of the benefits into the ATF and then the carrier would be entitled to be reimbursed 50% of that amount from the Special Disability Fund. However, finding that an order to deposit the full amount would not be "an equitable application of the statute," the Board directed the carrier to deposit only its 50% share of the award into the ATF. The employer and its carrier now appeal.

While it is within the Board's discretion to direct the carrier to make a deposit into the ATF in this case (see Workers' Compensation Law § 27 [2]), the Board must iterate the basis for doing so in its decision (see Workers' Compensation Law § 23). Here, because the Board did not provide any rationale for exercising its discretion to order the carrier to make a deposit into the ATF, its decision is insufficient to permit meaningful appellate review. Consequently, we must remit the matter for further findings (see e.g. Matter of Loftus v New York News, 279 AD2d 657 [2001]; Matter of Foos v Bausch & Lomb, 181 AD2d 951 [1992]).

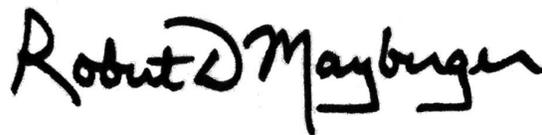
Spain, J.P., Lahtinen, Stein and Egan Jr., JJ., concur.

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ORDERED that the decision is reversed, without costs, and matter remitted to the Workers' Compensation Board for further proceedings not inconsistent with this Court's decision.

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