

Still Time to File WTC Claims

By Martin Minkowitz

Not long after the terrorist attacks on the World Trade Center in New York City, there was concern that heroic people who were involved in the rescue, recovery and clean-up operation might not be able to timely file claims for compensation under the Workers' Compensation Law (WCL). To address that concern the law was amended to add a new article to the WCL. The article was simply entitled "Article 8-A – World Trade Center Rescue, Recovery and Clean-up Operations." This legislation enacted in 2006 was made retroactive and was deemed to have been in full force and effect on and after September 11, 2001. It covered any employee who participated in the rescue, recovery or clean-up operations at the World Trade Center (WTC) site on and after September 11, 2001. It originally was written to end a year later on September 12, 2002 and defined what a site meant.¹ Recovery was later defined to mean someone who was recovering human remains. Coverage was expanded to include people who worked in jobs with tangible connections to certain named job functions in the law.² The law also includes people who were volunteers in the rescue, recovery and clean-up operation.³

As claims continued to be filed, the statute of limitations to file a claim under this provision of the WCL was extended several times. Currently, to apply for benefits a claimant is required to file a sworn written statement with the Workers' Compensation Board (WCB) on a prescribed form by September 11, 2022. The form tells the board with who the employer was and the time and location of the claimant when participating in the covered activity that caused the disability.⁴

Without this, Article 8-A claims for Workers' Compensation benefits would have been barred by either § 18 WCL (time notification to the employer of an accident), or § 28 WCL (timely filing of a claim with the board).⁵

In a recently reported case the board concluded that a claimant's back injury claim was time barred by § 28 WCL.⁶ In that case claimant's job was asbestos handling and his employer assigned him to do dust and debris clean-up at the site after the terrorist attack. He began working the following day (September 12, 2001) and continued doing it until December 24, 2001. Almost five years later, in 2006, he developed respiratory, gastroesophageal and other physical disabilities including a back injury. He filed a claim for workers' compensation benefits, which was disputed by the insurance carrier on behalf of the employer. A decision of the board's law judge at the time ruled that the claim was compensable, finding prima facie medical evidence of the disabilities of asthma and other internal injuries. However, at a subsequent hearing the

argument was successfully made that the back injury was not part of the 8A qualifying conditions, and as such was not given an extension of the filing time. It was therefore held time barred by § 28 WCL. The board panel upheld the law judge and claimant appealed to the Appellate Division, Third Department.⁷



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The appellate court reversed, finding that the back claim was a result of claimant's hazardous exposure at the site. It was a musculoskeletal disease, which is a qualifying condition under the law.⁸ The court specified the

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purpose of the law in its decision. It wrote: "Initially we note that the Worker's Compensation Law Article 8-A is to be afforded liberal construction as it was enacted to remove statutory obstacles to timely claim filing and notice for latent conditions resulting from hazardous exposure for those who worked in rescue, recovery or clean-up operations following the [WTC] September 11, 2001 attack."⁹

It then went on to make clear that if a claimant has a qualifying condition under Article 8-A that claim is not subject to the time limitations for filing that is contained in § 28 WCL.¹⁰

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The decision in *Chrostowski* illustrated that we have not, and probably will not see an end to World Trade Center claims for a long time. If longer than September 11, 2022, we may see an additional extension added to the law. Article 8-A is far from being insignificant, especially for those whose latent disabilities are first revealing themselves. For these claimants there is still time to file a WTC claim.

Endnotes

1. See § 161 WCL.
2. *Williams v. City of NY*, 89 A.D.3d 1182 (2011).
3. § 167 WCL.
4. *Id.*
5. There are still claims being filed.
6. *Chrostowski v. Pinnacle Environmental Corp.*, ___AD3d___ (2019).
7. § 23 WCL.
8. § 161(3)(e) WCL
9. Citing *Hazen v. WTC Volunteer Fund*, 120 A.D.3d 82 (2014), *Regan v. City of Hornell Police Dept.*, 124 A.D.3d 994 (2015), and *Martin Minkowitz Practice Commentaries*, McKinney's Cons. Laws of NY, Book 64, Workers' Compensation Law § 161 at 71.
10. *Chrostowski v. Pinnacle Environmental Corp.*, ___A.D.3d___ (2019).

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