

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 13, 2014

514522

In the Matter of the Claim of
DEBRA BAUM,
Respondent,
v

AFFIRMED Board's denial to reopen
case.

MEMORANDUM AND ORDER

HYLAN GROUP INC. et al.,
Appellants.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: January 8, 2014

Before: Peters, P.J., Lahtinen, Garry and Rose, JJ.

Weiss, Wexler & Wornow, PC, New York City (Lauren M. Bilasz
of counsel), for appellants.

Eric T. Schneiderman, Attorney General, New York City
(Marjorie S. Leff of counsel), for Workers' Compensation Board,
respondent.

Lahtinen, J.

Appeal from a decision of the Workers' Compensation Board,
filed July 22, 2011, which denied the application of the employer
and its workers' compensation carrier to reopen the claim.

Claimant's husband (hereinafter decedent) was murdered at
work, and the ensuing claim for workers' compensation death
benefits was established in 2004. The employer and its workers'
compensation carrier (hereinafter collectively referred to as the
employer) requested that the case be reopened in 2010, pointing

to evidence that decedent's murder was unconnected with his employment. The Workers' Compensation Board denied the application, and the employer now appeals.

We reject the employer's assertion that the Board abused its discretion in refusing to reopen the claim and, accordingly, affirm. An application to reopen "must be made within a reasonable time after the applicant has had knowledge of the facts constituting the grounds upon which such application is made" and, further, "must be substantiated by supporting affidavits" where allegations of newly discovered evidence are made (12 NYCRR 300.14 [b]). The employer's application was expressly "based upon newly obtained evidence" and, thus, both requirements apply. While the employer allegedly did not ascertain the facts surrounding decedent's death until several months before its 2010 application for reopening, it cited a 2005 press release in support of its assertions.¹ No affidavit was provided to explain the delay in bringing this information to the Board's attention and, thus, the employer's application was properly denied (see Matter of Barone v Inerstate Maintenance Corp., 73 AD3d 1302, 1303 [2010]; Matter of Buffa v Morse-Diesel-Diesel Constr. Co., 87 AD2d 929, 929 [1982]).

Peters, P.J., Garry and Rose, JJ., concur.

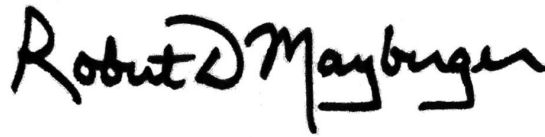
¹ The United States Attorney's Office for the Eastern District of New York issued that press release, stating therein that decedent was executed by gang members who feared that "he was seeking to avenge his brother's murder."

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ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court