

Decided and Entered: June 24, 2010

508569

In the Matter of the Claim of
ILONA GRILL,
Respondent,

v

FASHION INSTITUTE OF
TECHNOLOGY et al.,
Appellants,
and

MEMORANDUM AND ORDER

SPECIAL DISABILITY FUND,
Respondent.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: May 27, 2010

Before: Mercure, J.P., Peters, Spain, Malone Jr. and
Kavanagh, JJ.

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

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

Peters, J.

Appeals (1) from a decision of the Workers' Compensation
Board, filed March 16, 2009, which ruled that Workers'
Compensation Law § 15 (8) (ee) did not apply to claimant's award

of workers' compensation benefits, and (2) from a decision of said Board, filed August 6, 2009, which denied the application of the employer and its third-party administrator for full Board review.

Claimant suffers from interstitial pulmonary fibrosis and lung disease, which has been established as a compensable occupational disease. The question thereafter arose as to whether her condition constituted a dust disease that entitled the employer and its third-party administrator (hereinafter collectively referred to as the employer) to reimbursement from the Special Disability Fund (see Workers' Compensation Law § 15 [8] [ee]). The Workers' Compensation Board determined that it did not and the employer appeals.¹

We affirm. Whether a condition constitutes a dust disease within the ambit of Workers' Compensation Law § 15 (8) (ee) depends "upon the pathological distinction between pneumoconiosis – i.e., diseases caused by the inhalation of dust particles which affect the parenchyma, or essential functioning aspects, of the lungs – and those diseases which affect the pleura, or lining, of the lungs" (Matter of Fama v P & M Sorbara, 29 AD3d 170, 172 n 1 [2006], lv dismissed 7 NY3d 783 [2006]; see Matter of Matott v St. Joe's Lead, 245 AD2d 907, 908 [1997]). If a lung disorder arises from pneumoconiosis, it is properly viewed as a dust disease (see Matter of Smith v Certain Teed Prods. Corp., 85 AD2d 820, 820-821 [1981]; Matter of Viskovich v Keasbey Co., 36 AD2d 665, 666 [1971], lv denied 29 NY2d 483 [1971]). Here, claimant's treating pulmonologist determined that she suffered from pneumonitis arising from her exposure to aerosolized paint, but did not find that she had pneumoconiosis. As the Board was free to credit that opinion over the equivocal diagnosis of pneumoconiosis rendered by another physician, we are satisfied

¹ Inasmuch as the employer fails to raise any issue with respect to its separate appeal from the Board's denial of its application for full Board review, we deem that appeal to have been abandoned (see Matter of LeFever v City of Cortland Fire Dept., 66 AD3d 1061, 1062 n [2009], lv denied 13 NY3d 716 [2010]).

-3-

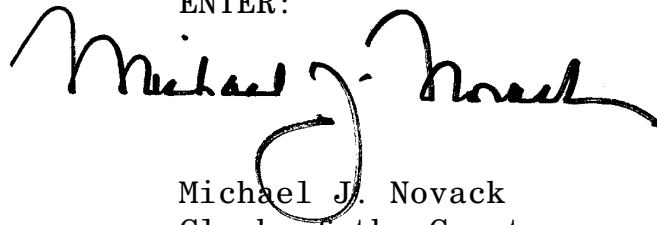
508569

that substantial evidence supports its decision (see Matter of Lalla v Astoria A.C., 156 AD2d 808, 809-810 [1989]; Matter of Roberts v Agway, Inc., 71 AD2d 733, 734 [1979]).

Mercure, J.P., Spain, Malone Jr. and Kavanagh, JJ., concur.

ORDERED that the decisions are affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Novack
Clerk of the Court