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Ruling Could Award Benefits to More 9/11 Volunteers

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ALBANY - Many more volunteers who rushed to "the pile"—the ruins of the World Trade Center—after the Sept. 11 terrorist attacks may now be eligible for medical compensation, thanks to a state appeals court decision.

A unanimous panel of the Appellate Division, Third Department, ruled Thursday in [Matter of Hazan](#), 517129, that the state Workers' Compensation Board improperly limited its definition of post-9/11 "volunteer" first responders only to those "serving under the direction of an authorized rescue entity or volunteer agency."

The board had rejected a request from Jaime Hazan, an emergency medical technician, who sought benefits under the World Trade Center Volunteer Fund, because he was not under authorized direction when he pitched in for two days.

Benefits under the World Trade Center Volunteer Fund are paid out according to the schedule of Workers Compensation payments, which are capped at \$400 a week.

An administrative law judge originally found Hazan eligible due to health problems from his exposure to dust and toxins. In his 2010 application, Hazan said he suffered from gastroesophageal reflux disease, depression, anxiety, rhinitis and sinusitis.

On the morning of 9/11, Hazan said he left his Upper West Side home intent on aiding responders to the attack. He ended up that first day sorting supplies and setting up a treatment area at Chelsea Piers, according to the ruling.

The next day, Hazan said he used his EMT identification to gain access to Ground Zero, where he attempted to search for survivors.

The court said he did not volunteer again after Sept. 12, 2001.

The Third Department said state statutes say nothing about benefits for World Trade Center responders—Workers' Compensation Law Article 8-A or §§161 and 162—that could deny Hazan's application based on the workers' compensation board's interpretation of a "volunteer."

"Noticeably absent ... is any requirement that such individual 'serve under the direction of an authorized rescue entity or volunteer agency,'" Justice John Egan Jr. wrote for the 5-0 court. "Accordingly, the board's imposition of such a requirement is, to our analysis, contrary to the plain terms of the statute."

Egan noted that even after the Legislature adopted Article 8-A in 2006 to expressly remove "statutory obstacles to timely claims" for exposure to toxic substances from 9/11, the board continued to rely on the restrictive definition of volunteer that its chairman had first formulated in a 2003 order.

Egan said a review of the legislative drafts of Article 8-A revealed that several versions contained language to include only volunteers who rendered service under the "direction and control of an authorized rescue entity." That language was omitted in the final version, a fact Egan said was "persuasive evidence" that the Legislature specifically rejected the interpretation of "volunteer" that the Workers' Compensation Board still followed after 2006.

While the chair of the board is empowered to administer the Workers' Compensation Law, the court said he or she does not have the "authority to supplement or amend duly enacted legislation."

Justices John Lahtinen, William McCarthy, Robert Rose and Michael Lynch joined in the June 5 ruling.

Hazan, 42, said he believes the court's ruling could impact thousands of volunteers exposed to toxic dust and debris in the aftermath of 9/11.

"I was there. I saw what was going on. It was mobbed with volunteer responders who weren't on the payroll or in uniform," he said in an interview.

Hazan said anger runs high among many of 9/11 volunteers he knows who have been denied benefits that could be a "lifeline" while struggling with serious ailments they blame on exposure to World Trade Center debris. He said he has exhausted his savings and had to dip "deep" into his IRA in his quest for 9/11 benefits.

Michael Hutter, an Albany attorney who teaches at Albany Law School, said he represented Hazan pro bono through the New York State Bar Association's Pro Bono Appeals Program for the Third Department.

"This is the first time that an appeals court has come forward with a decision on this issue," Hutter said. "I suspect that a lot of people may have decided to not pursue a claim because they could not show that they worked for a sponsoring agency. Clearly, there are a lot of people who are going to be impacted by this."

Hutter said the initial rules from the Workers' Compensation board in 2003 "kind of made sense because the state had not adopted legislation interpreting what a volunteer was."

"But it made no sense after the Legislature enacted legislation [in 2006] specifically omitting that requirement of having to have worked under the auspices" of an agency or volunteer group, Hutter said.

A \$25 million federal allocation was assigned to the World Trade Center Volunteer Fund to

compensate volunteers who died or suffered injuries when they voluntarily responded to the 9/11 attacks. The Workers' Compensation Board transferred management of the fund in 2013 to a private third-party administrator, Triad Group LLC, but the board continues to decide which beneficiaries are eligible for the money.

The state Uninsured Employers Fund was assigned to represent the Workers' Compensation Board in the case, but it did not file papers contesting Hazan's appeal of his denial of benefits by the board.

Rachel McEneny, spokeswoman for the Workers' Compensation Board, said the board was reviewing the decision and had no comment Friday.

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