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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of ANDRZEJ CHOJNOWSKI, Appellant,
v.
PINNACLE ENVIRONMENTAL CORP., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

December 17, 2020

Facts: This claimant had two claims. The first is 9/11 occupational disease case established pursuant to Section 8-A for GERD, rhinitis, bronchitis, sleep apnea, lung nodules, and PTSD. The claimant never received indemnity benefits in connection with that case. The second claim is established for injuries to the neck, right hip, right knee and back. The claimant was awarded indemnity benefits in the second case. When the issue of permanency arose the two claims were directed to travel together. Ultimately the claimant was determined to have 65% permanent partial disability in connection with the occupational disease claim but no entitlement to indemnity benefits as his loss of wage-earning capacity was not related to that case. In the second claim the claimant was found to have a 65% loss of wage-earning capacity for which he would be entitled to indemnity benefits. The claimant appealed to the Board Panel arguing that he should be entitled to indemnity benefits for both claims. The Board Panel found the findings made at the time of the classification hearing to be conflicting, rescinded the classification and restored the claims to the trial calendar for further development of the record. The Board also rejected the claimant's argument that he would be entitled to benefits in the occupational disease claim noting that the claimant had never been entitled to causally related benefits in this case so here there is no issue of attachment or reattachment. The Board did direct continuing indemnity benefits to the claimant at a tentative rate in the second case.

Holding: Dismissed.

Discussion: There has been no final decision on the issues at the Board level. The case was restored for further development of the record on the permanency findings between the two files and the Board must first rule on the issues before an Appeal to the Court would be ripe.

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