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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Matter of Joseph Esposito, Appellant

v.

Tutor Perini Corporation et al., Respondents

and

Workers' Compensation Board

Decided February 8, 2018

- Facts: The claimant alleged various lung conditions as a result of exposure to irritants while at work. The Workers' Compensation Board precluded the report of one of the claimant's doctors for failure to comply with WCL Section 137 and its associated regulations. Ultimately, the Board found there was insufficient evidence to establish the claim. This appeal ensues.
- Holding: Affirmed.
- Discussion: The doctor that was precluded by the Board was clearly a consultant as he was retained to offer an opinion regarding causal relationship. It is irrelevant whether his opinion was requested by the carrier or the claimant. With respect to its evaluation of the remaining evidence, the Board is vested with ability to make its own credibility determinations and resolve conflicting evidence.