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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Barney COX, Respondent,

v.

SUBURBAN PROPANE LP, Appellants

WORKERS' COMPENSATION BOARD, Respondent.

January 30, 2020

**Facts:** Prior to this Workers' Compensation claim, the claimant had been diagnosed with lung cancer and underwent partial right lung removal surgery. The claimant was out of work for six months and then returned full time in the same capacity. The claimant had been diagnosed with complex regional pain syndrome after the lung surgery. The claimant was injured at work and filed a Workers' Compensation claim, which was established for the right shoulder, right chest, and thoracic strain, later amended to include aggravation of complex regional pain syndrome. The carrier sought apportionment, but the Board found that apportionment was not warranted.

**Holding:** Affirmed.

**Discussion:** "As a general rule, apportionment is not applicable as a matter of law where the preexisting condition was not the result of a compensable injury and the claimant was able to effectively perform his or her job duties at the time of the work-related accident despite the preexisting condition." The claimant in this case actually had a restriction on the number of hours he could work, as well as the weight he could lift, however, the testimony in the case was that the lifting restriction did not prevent him from performing his job, which was managerial. The claimant has also taken pain medication for the condition but did not receive treatment. The Court found that the dispositive issue was

whether the condition was disabling, and substantial evidence supported the Board's determination that it was not.

*Stewart, Greenblatt, Manning & Báez*