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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of SCOTT HAMILL, Appellant,
v.
ORANGE COUNTY SHERIFF'S DEPARTMENT, Respondent,
WORKERS' COMPENSATION BOARD, Respondent.

January 7, 2021

Facts: This is an established claim of an injury to the back. Nine years after the accident the claimant retired and alleged that he was doing so at least in part, because of the injury. After litigation ensued, the Law Judge held the claimant's retirement was not causally related but that subsequent to his retirement the claimant had reattached himself to the labor market when he obtained part-time employment and directed the claimant to produce his wages for a reduced earnings claim. The carrier appealed and the Board Panel modified the decision to find that there was no nexus between the claimant's back injury and his reduced earnings.

Holding: Affirmed.

Discussion: A claimant who voluntarily retires but then reattaches to the labor market must show that his earning capacity has been adversely impacted by the compensable injury. The claimant kept working for the employer for many years after the accident and there was evidence submitted that his decision to retire was based on economic considerations, specifically a retirement incentive package.