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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of YI SUN, Appellant,

v.

DR2 COMPANY LLC, Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

January 13, 2022

Facts: This *pro se* claimant had one case for occupational bronchitis where she was classified with a 40% partial disability and awarded continuing benefits at the rate of \$78.06 and then a second case for an injuries to the back, right shoulder and right elbow where she would found to have a 40% loss of wage earning capacity entitling her to continuing benefits of \$150.00 for a maximum of 275 weeks. Her permanent partial disability benefits were apportioned 50% to each case. About five years after she was classified on the second claim the claimant filed to increase her benefits alleging that she required emergency medical and financial assistance. The Board Panel treated the claimant's filing as an Application for Reopening for purposes of reclassification and found that the claimant had presented insufficient evidence to show a change in condition that would require reclassification. The Board also rejected her claims on the grounds of extreme hardship under Workers' Compensation Law Section 35 (3).

Holding: *Affirmed.*

Discussion: The Board was right to deny the request for reopening because the claimant failed to provide sufficient evidence to establish that a material change in her condition occurred. The extreme hardship provision also does not apply because that requires classification with a loss of wage-earning capacity greater than 75%.