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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Edward GALATRO, Appellant

v

SLOMINS, INC., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

Decided July 15, 2021

Facts:

In 2013 the claimant sustained a work-related injury to his left knee. Following surgery, the claimant complained of chest pain and claimed a causally related heart attack. He relied upon a 2015 report from his own consultant, Dr. Ploss. The carrier produced its own consultant's report denying causal relationship for the heart attack. Following testimony, the Law Judge agreed that the claimant's consultant did not comply with Section 137 regarding his 2015 report and precluded his opinion. The Board affirmed the Law Judge and further credited the opinion of the carrier's consultant and disallowed the claim. In its original decision the Board included the following language "that no further direction was planned . . . at this time." Instead of appealing this decision, the claimant submitted a second report from Dr. Ploss (2017) based upon a new exam. The Law Judge denied the request to relitigate having found the claim for the myocardial infarction was previously ruled on by the Board. This was appealed and the Board denied the request for reconsideration. The claimant then appealed this decision to the Third Department (177 AD3d 1232 (2019)). At that time the Court held that the underlying decision did not preclude the claimant from submitting further medical evidence of causally related injuries. On remand, the Board found that if it were to consider the 2017 report of Dr. Ploss, it would find same as insufficient to warrant reconsideration of its prior decision disallowing the claim for the myocardial infarction. The Board also modified the language in prior decisions to remove "no further direction is planned...at this time."

Holding: *Affirmed*

Discussion: The Court held that the record confirms the parties were given a full and fair opportunity to develop the issue of a causally related injury. Although the Board found that the 2015 report from Dr. Ploss did not comply with Section 137, the Board then considered the remaining medical evidence of the carrier's consultant. The Court confirmed that the record was fully developed and that given the Board's decision to omit the "erroneous phrase" of no further direction is planned at this time, that the decision would be affirmed. The Court also referenced the fact that the 2017 report of the claimant's consultant does not indicate that myocardial infarction was related to the established knee injury and instead related it to the "claimant's job activities."

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