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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

PAUL R. HISERT, Appellant

v.

RON ALLEN TRUCKING INC., ET AL, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

July 18, 2019

Facts: This involves an Appeal filed by the claimant regarding the claimant's failure to obtain the consent of his employer's Workers' Compensation carrier to settle a third-party action and was therefore barred from receiving further awards.

This claim was established for injuries sustained in a motor vehicle accident. The claimant was classified with a permanent partial disability and a 51% loss of wage-earning capacity. A third-party action had been commenced by the claimant. The action settled for \$50,000.00. The carrier asserted that the claimant should be barred from future Workers' Compensation benefits because it did not obtain its consent to the settlement pursuant to WCL Section 29(5). The Administrative Law Judge determined that the third-party action was settled without consent and further noted the claimant forfeited any further Workers' Compensation benefits. The Board Panel affirmed the Judge's decision and the claimant filed an Appeal.

Holding: *Affirmed.*

Discussion: The Court noted that Section 29(5) requires either the carrier's consent or a compromised order from the Court in which the third-party action is pending for a claimant to settle a third-party action and continue receiving Workers' Compensation benefits. The burden is on the claimant to establish a proper

consent was secured. The question of whether the settlement was procured with the proper consent is a factual issue for the Board to determine. As this is a question of fact, the Court has no power to upset the determination provided there is substantial evidence. The Court found that the claimant's argument of relying on two correspondences regarding the carrier having no objection to the \$50,000.00 policy limit settlement, the Court noted that both of those correspondences also specifically advised that the carrier's consent is required prior to settling or discontinuing the third-party action.

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