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Supreme Court, Appellate Division, Third Department, New York

Matter of JASON REESE, Appellant

v

SYSCO FOOD SERVICES-ALBANY, Respondent

and

WORKERS' COMPENSATION BOARD

Decided March 30, 2017

Facts: This claim was established for injuries to the back and left hamstring. The claimant lost some time from work, but then resumed working. While back at work he purportedly experienced an abrupt episode of back pain that caused him to fall and fracture one of the fingers on his right hand. The employer offered him light duty work with no lifting. The claimant left work on his first day of light duty and went to the doctor complaining of back pain. The employer raised voluntary removal. The Law Judge ultimately established the claim for the finger injury and found that the claimant had not voluntarily removed himself from the labor market. The employer appealed and the Board Panel modified the Decision to find that the claimant had voluntarily removed himself. After 18 months of being out of work the claimant was terminated pursuant to the collective bargaining agreement. During the 18 month period the claimant had started working for a different employer and accordingly, he filed a claim for reduced earnings. The Law Judge denied the claim ruling that the reduced earnings were not causally related to the injury. The Board Panel Affirmed. The claimant now appeals.

Holding: *Affirmed.*

Discussion: Whether a claimant's reduced earnings are causally related to the work-related injury is a factual issue left to the Board to determine and will be upheld when, as here, it is supported by substantial evidence. The Board had found that the

claimant voluntarily removed himself from the labor market and the claimant's inability to continue working for the employer were not causally related to the work-related injury. Therefore, the decision should not be disturbed.

*Stewart, Greenblatt, Manning & Báez*