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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Ryszard CALA, Appellant,

v.

PAL ENVIRONMENTAL SAFETY CORP. et al., Respondents,

and

WORKERS' COMPENSATION BOARD, Respondent.

March 10, 2022

Facts: The parties litigated the issue of causally related hearing loss. The Law Judge and the Board Panel credited the testimony of the carrier's consultant that the claimant only had a 25.32% binaural hearing loss. The claimant appeals.

Holding: *Reversed.*

Discussion: The carrier's consultant did not include the audiogram on which he based his opinion. Previously, the Board has found that in such cases, the report must be precluded. While the issue was raised by the claimant before the Law Judge and on appeal, the Board never provided a rational explanation as to why it was departing from its prior precedent and therefore the decision must be reversed.