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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Joseph IPPOLITO, Claimant,

v.

New York City Transit Authority, Appellant,

and

WORKERS' COMPENSATION BOARD, Respondent.

March 10, 2022

Facts: The claimant produced a permanency report and the self-insured employer was precluded from doing so. However, it was permitted to cross examine the claimant's doctor. In its summations, the self-insured employer argued that the claimant's doctor was not credible because the claimant was not at maximum medical improvement as he had not exhausted conservative care, the doctor did not review all the claimant's medical records, and his opinion was not in accordance with the 2018 permanency guidelines. The Law Judge disagreed and found permanency largely consistent with the claimant's doctor's opinion. The self-insured employer raised the same issues on appeal and the Board Panel affirmed. The self-insured employer now appeals.

Holding: *Reversed.*

Discussion: The Court found that neither the Law Judge nor the Board addressed the issues raised by the self-insured employer. For example, while the Board laid out the positions of the parties in detail, but then simply adopted the Law Judge's findings without further explanation. This deprived the self-insured employer of its right to have merits of its arguments considered. Therefore, the matter was

returned to the Board for further consideration of the self-insured employer's arguments.

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