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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Matthew Dennis SCHUETTE, Claimant-Appellant,
v.
CONSOLIDATED EDISON COMPANY OF NEW YORK, Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

MARCH 21, 2024

Facts: The claimant had an established claim for his right wrist from 2019. He had surgery in 2020 and was subsequently diagnosed with bilateral carpal tunnel syndrome. Subsequently another doctor found the claimant to be at maximum medical improvement and found a 73 1/3 SLU and noted that the claimant would have very limited use of the right hand. The claimant then filed a separate occupational disease claim for bilateral carpal tunnel syndrome as a result of 20 years of repetitive motion. The carrier's IME also found a 73 1/3 SLU.

The carrier then raised a §114-a violation against the claimant for failing to disclose the prior bilateral carpal tunnel syndrome diagnosis, treatment, or his work activities to the doctor performing the permanency evaluation.

During his testimony the claimant confirmed that he had been diagnosed with bilateral carpal tunnel syndrome before the carrier's IME and also that, at the time of the permanency evaluation he was using tools such as screw guns and shovels for the employer of record and also using similar tools when working for his own construction company at the same time doing sheetrock repairs, installation, and painting. The IME testified that he was unaware of the carpal tunnel syndrome diagnosis or the claimant's work activities at the time of his evaluation.

The Law Judge found that it was premature to determine MMI and SLU as neither doctor was aware of the claimant's carpal tunnel diagnosis, testing, or treatment, and this could have impacted their opinion regarding permanency, and whether the condition was related to the 2019 injury or not. However, the Law Judge also found that the claimant had not violated §114-a, despite the fact that his testimony regarding work activity and

diagnosis were inconsistent with what he told the doctors evaluating him. The Board affirmed and the claimant appeals.

Holding: *Affirmed.*

Discussion: The Court essentially deferred to the Board's determination regarding permanency and SLU as there was substantial evidence to support it.

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