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State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of GLENN HEDGES, Appellant

v.

SCANDIA REALTY LTD., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 10, 2022

Facts: Claimant sustained injuries while working as a fire safety director. Subsequent to the accident, he moved to Florida and began working in a different capacity. Thereafter, medical evidence submitted reported a partial disability. Carrier's consultant found that the claimant had no disability. The parties thereafter agreed to a 45% loss of wage-earning capacity. An additional finding was made at that time that the claimant was working at his full average weekly wage and not entitled to wage replacement benefits. Various retroactive periods were addressed on the issue of reduced earnings. A particular period was awarded for reduced earnings, appealed by the carrier and reversed by the Review Panel. The claimant appealed the rescission of a reduced earnings award for a period of time.

Holding: *Affirmed.*

Discussion: Of note, the period in question preceded the agreement that the claimant had a permanent loss of wage-earning capacity. The Court stated that in the absence of a permanency

classification, claimants are required to submit medical progress reports from their treating physicians at least every 90 days supporting a continuing disability, up until such classification. Only after classification as permanently disabled, did the presumption of continuing disability arise, dispensing with the requirement for ongoing progress reports. The claimant did not have medical evidence of disability for the period in question. The Court held that although the Board may have some discretion to excuse claimant's failure to strictly comply with the 90-day progress report requirement, its refusal to do so under these circumstances did not constitute an abuse of discretion.

*Stewart, Greenblatt, Manning & Báez*