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In the Matter of EDWARD HOPECK, Appellant

v.

AL TECH SPECIALTY STEEL CORP., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 26, 2022

Facts: Claimant appealed a decision barring the reopening of the claim pursuant to Workers' Compensation Law Section 123. Claimant sustained an injury to his left knee in 1984 and received a schedule loss of use award. The case was reopened in 2000, transferred to Special Funds under Section 25-a and closed with an increase in schedule loss of use. The claimant then filed a new claim to the left knee in 2002. The claimant underwent knee replacement surgery in 2006. Awards were made without prejudice to apportionment. Subsequently, the new claim was canceled and combined into the existing claim. The claim was closed in 2006. The claim remained dormant until 2020 when the claimant requested further action seeking awards for two additional surgeries that took place in 2017 and 2019. The presiding Workers' Compensation Law Judge found that Section 123 had been satisfied barring the claimant from any additional awards. That decision was affirmed by the Review Panel.

Holding: *Affirmed.*

Discussion: The Court reviewed the requirements under Section 123 including “after a lapse of 18 years from the date of the injury or death and also a lapse of 8 years from the date of the last payment of compensation” for there to be a true closing and a potential bar of any new awards. The Court noted that this was a question of fact for the Board. Turning to the facts of the claim based upon the claim remaining dormant for more than ten years, the Court found that the Board’s decision finding that Section 123 was applicable was supported by substantial evidence.

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