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State of New York Court of Appeals

In the Matter of the Claim of

JUDITH PATTERSON-DJALO, Claimant,

v.

COLD SPRING ACQUISITION LLC, Respondent,

And

ORISKA INSURANCE COMPANY, Appellant.

WORKERS' COMPENSATION BOARD, Respondent.

May 30, 2024

Facts: Claimant has an established claim for work related injury to the left shoulder, head and back. Claimant's injuries were determined to be permanent and a hearing was scheduled to determine scheduled loss of use ("SLU"). Carrier and employer's counsel attended the hearing along with claimant and claimant's counsel. Claimant objected to the presence of counsel for Rashbi Management Inc., who is employer's contractual guarantor to carrier. The Workers' Compensation Law Judge ("WCLJ") found Rashbi was not a necessary party of the interest and precluded its counsel from the hearing.

Claimant consented to agree with carrier's consultant's finding that she had a 40% SLU, and a decision was entered for a 40% SLU award. Carrier and Rashbi filed applications for review. The Board affirmed the WCLJ's decision, finding that carrier, not Rashbi was the liable party for indemnity and medical costs in this claim. Further, as the carrier failed to make timely payments to the claimant, the Board imposed a penalty on the Carrier as well as a fine. The carrier appealed.

Holding: *Affirmed.*

Discussion: The carrier expressly stated that it was not challenging the fact that Rashbi was not a party of interest, but instead was seeking remittal to a court to litigate the

obligation of employer to pay retrospective premiums due to the carrier. This issue was never before the Board, and likewise, not before this Court in this appeal. Thus, the Board properly exercised its jurisdiction over this claim and any request or action on the part of the Board to remit this matter to another court for the benefit of Carrier would be unauthorized. With regard to the penalty, as the Carrier did not raise any valid arguments in support of its failure to timely pay the SLU award to Claimant, this decision was also affirmed.

Stewart, Greenblatt, Manning & Báez