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Supreme Court, Appellate Division, Third Department, New York

In the Matter of DWAYNE MCQUEER, Respondent

v.

ADIRONDACK TANK SERVICE INC., et al, Appellants and

WORKERS' COMPENSATION BOARD, Respondent

August 25, 2016

Facts: The claimant has an established case and subsequently settled an associated third party action. The parties entered into a stipulation in 2004 wherein the carrier agreed to take its credit only against future indemnity payments and to pay for the claimant's causally related medical care. The stipulation also included a weekly indemnity rate and noted that the carrier's credit would last for 198.72 weeks.

The claimant did not seek further care until 2012 when he submitted a report indicating that he was totally disabled, and requested a hearing noting that the carrier's credit expired in 2009. The carrier requested a hearing to address the applicability of Workers' Compensation Law Section 25-a. The carrier failed to attend the hearing and the Law Judge found that the credit had expired and that payments to the claimant should resume as of July 2012.

The Board Panel affirmed the Law Judge's decision and Full Board review was denied. The carrier appealed from both decisions.

Holding: Affirmed.

Discussion: Inasmuch as the Board's factual determination was based on substantial evidence (in this case the plain language of the stipulation), it is binding on the Court. Furthermore, because the stipulation did not require the claimant to prove an ongoing disability during the

carrier's holiday, and the carrier did not attend the hearing at which it could have made that argument, no different conclusion is necessary.

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