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Supreme Court, Appellate Division, Third Department, New York

Matter of TIMOTHY O'CONNOR, respondent,
v
SKF USA, INC. et. al, Appellants,
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided May 31, 2018

Facts: Claimant filed a claim for work-related hearing loss and submitted a medical narrative from an otolaryngologist who diagnosed the claimant with work-related binaural hearing loss. The carrier controverted the claim and asserted that claimant's doctor was an IME and not an attending physician, and accordingly, the failure to comply with the requisite statutory requirements of submitting an IME report warranted its preclusion. The Judge rejected this contention and found that there was sufficient medical evidence for the claim to proceed. The Board affirmed.

Holding: *Dismissed.*

Discussion: The Board's decision is interlocutory in nature as it does not dispose of all the substantive issues nor reach legal threshold issues which may be determinative of the claim. Also, a determination regarding the admissibility of prima facie medical evidence is interlocutory in nature and should not be appealed until the claim is finally decided by the Board. To consider whether evidence was properly admissible would amount to a piecemeal review of the case, which should be avoided.