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Supreme Court, Appellate Division, Third Department, New York

Matter of the Claim of Edward GALLAGHER, Appellant,

v

HINES INTERESTS LIMITED PARTNERSHIP et al., Respondents

and

Workers' Compensation Board, Respondent.

November 12, 2020

Facts: The parties stipulated that claimant had a 33% SLU of the right arm and no SLU of his right hand and the matter was closed. Claimant continued treatment for his right hand and, subsequently, submitted a permanency report finding a 30% SLU of his right hand. Although the IME agreed that there was a 30% SLU, the employer and its workers' compensation carrier contested an SLU award, contending that claimant had not established a sufficient change in condition to reopen the claim and, further, that claimant had waived any SLU to the right hand by the terms of the stipulation.

Holding: *Affirmed.*

Discussion: The Court noted it is within the Board's discretion whether to reopen a claim upon an application of any party in interest based upon proof of a change in condition. The Board may in its discretion, require the applicant to submit further proof before determining whether to grant such application. Notwithstanding the medical conclusions that claimant had a 30% SLU of his right hand, the Court found no error in the Board decision not to reopen the claim given that the

medical records did not demonstrate any change in claimant's condition sufficient to warrant reopening.

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