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State of New York Supreme Court, Appellate Division
Third Judicial Department
In the Matter of the Claim of

Okang Bonitto, Claimant,

v.

Vivid Mechanical LLC, et al., Appellants,
Workers' Compensation Board, Respondent

October 3, 2024

Facts: The claimant was working as a mechanic pipefitter. When he opened a union on a bypass of a hot water pipe hot steam was released with an unfamiliar smell. The claimant experienced difficulty breathing and was taken to the hospital. He was diagnosed with a collapsed lung and underwent surgery. A claim was filed and controverted. The claim was disallowed at trial with the Law Judge finding the medical evidence did not support a causal relationship. The Board reversed the decision and established the claim for a collapsed lung. The Board noted the claimant's treating providers both found causal relationship. With regard to the carrier's application to have the claimant's medical records precluded due to the failure of the doctors to appear for testimony and upon which the Board relied in establishing the claim, the Board stated that the record did not contain sufficient evidence that the carrier's attorney made a reasonable effort to find a mutually agreeable date for depositions per the Judge's direction. The Carrier appealed.

Decision: *Affirmed.*

Discussion: The claimant testified at trial that prior to opening the pipe he was working on a ladder for 30 minutes to an hour. After opening the pipe and being exposed to fumes, the claimant developed chest pain while still on the ladder. He went outside for air but felt worse and called 911. He was taken to the hospital and underwent surgery for the collapsed lung. The claimant's treating providers received the same history and diagnosed the claimant with a causally related collapsed lung. One provider noted the claimant's collapsed lung was

concomitant with inhalation triggers. The Court found substantial evidence supporting the Board's determination to establish the claim. With regard to the Board's not precluding the medical records the Court acknowledged that the claimant's doctors failed to appear for depositions. However, the carrier did not seek an extension or an adjournment to complete medical testimony prior to the March 26, 2022 deadline set by the Law Judge. The Carrier was also directed by the Judge previously to find a mutually agreeable date for the doctor's depositions and failed to do so. The Court found the Board did not abuse its discretion in refusing to preclude the medical records from the claimant's treating providers.

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