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Supreme Court, Appellate Division, Third Department, New York

In the Matter of MATTHEW S. JOHNSON, Appellant

v.

ADAMS & ASSOCIATES, Respondents

WORKERS' COMPENSATION BOARD, Respondent

June 30, 2016

Facts: The claimant had an established left knee claim. The case was amended to include left lower extremity reflex sympathetic dystrophy and left leg deep vein thrombosis as well as injuries to the left Achilles heel and right knee. The claimant sought to amend the claim to include reflex sympathetic dystrophy of the left upper extremity. The Judge denied the application and the Board affirmed the Judge's finding concluding the claimant had not demonstrated a consequential injury to the left upper extremity. Additionally, it was found that advanced payment of compensation regarding that condition did not compel the amendment of the claim to include the condition. The claimant appealed.

Holding: Affirmed.

Discussion: The Court found that as long as the Board's determination is supported by substantial evidence, it would be upheld. The Court noted that the independent medical examiner examined the claimant on three separate occasions and noted it was his opinion there was no reflex sympathetic dystrophy of the left upper extremity. There were no objective signs of reflex sympathetic dystrophy in the claimant such as hair and nail growth changes, changes in color and temperature of the skin, changes in sweat glands and atrophy. The bone scan was negative for reflex sympathetic dystrophy as well. The claimant's doctor testified that he did not observe the objective signs of reflex sympathetic dystrophy as well. He reached a diagnosis based on subjective complaints. The resolution of conflicting medical opinions is within the province of the Board and the Court found its decision that the claimant failed to establish reflex sympathetic dystrophy of the left upper extremity to be supported by substantial evidence. Regarding the issue

of advanced payment of compensation, while that could preclude a defense based upon statute of limitations, it does not foreclose the carrier from asserting other defenses and does not give rise to estoppel where the elements have not been otherwise met.

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