

Decided and Entered: June 17, 2010

508697

In the Matter of the Claim of
SANDY DUPUIS,
Respondent,
v

FRITO LAY et al.,
Respondents,
and

MEMORANDUM AND ORDER

SPECIAL DISABILITY FUND,
Appellant.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: April 19, 2010

Before: Cardona, P.J., Mercure, Peters, Kavanagh and Garry, JJ.

Steven M. Licht, Special Funds Conservation Committee,
Albany (Jill B. Singer of counsel), for appellant.

Stockton, Barker & Mead, LLP, Albany (Leith Carole Ramsey
of counsel), for Frito Lay and another, respondents.

Cardona, P.J.

Appeal from a decision of the Workers' Compensation Board,
filed March 23, 2009, which ruled that the employer's workers'
compensation carrier is entitled to reimbursement from the
Special Disability Fund.

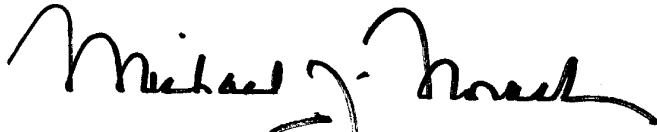
Claimant sustained a work-related knee injury and received workers' compensation benefits. The employer's workers' compensation carrier sought reimbursement from the Special Disability Fund pursuant to Workers' Compensation Law § 15 (8) asserting that claimant's diabetes, among other preexisting conditions, had contributed to his disability. The Workers' Compensation Board ultimately granted the carrier's application, and the Special Disability Fund now appeals.

In order to obtain reimbursement under Workers' Compensation Law § 15 (8) (d), the carrier was obliged to show that claimant had (1) a preexisting permanent impairment that hindered his job potential, (2) a subsequent work-related injury, and (3) a permanent disability caused by both conditions that is materially and substantially greater than what would have arisen from the work-related injury by itself (see Matter of Li v Southern Garden, Inc., 69 AD3d 1175, 1176-1177 [2010]; Matter of Guarascio v Spargo Wire Co., 32 AD3d 1148, 1149 [2006]). We are unpersuaded by the Special Disability Fund's contention that the Board erred in finding that the first and third prongs were satisfied herein. As relevant to the first prong, an orthopedic surgeon who examined claimant testified that claimant's preexisting and insulin-dependent diabetes hindered his ability to perform certain types of employment. With respect to the third prong, that surgeon further stated that, due to his diabetes, claimant should not take anti-inflammatory drugs in connection with the treatment of his knee injury. Additionally, another examining physician explicitly opined that claimant's diabetes led to a permanent disability materially and substantially greater than one caused by the knee injury alone. This medical proof provides substantial evidence to support the Board's decision (cf. Matter of Sturtevant v Broome County, 188 AD2d 893, 893-894 [1992]), notwithstanding the fact that other evidence in the record could support a contrary result (see generally Matter of Li v Southern Garden, Inc., 69 AD3d at 1177; Matter of Flynn v Managed Care, Inc., 27 AD3d 794, 796 [2006], lv denied 7 NY3d 717 [2006]).

Mercure, Peters, Kavanagh and Garry, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Novack
Clerk of the Court