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Supreme Court, Appellate Division, Third Department, New York

Matter of GERRY J. DEROUCHIE, Claimant

v

MASSENA WEST-WC-SMELTER et. al, Appellants

and

WORKERS' COMPENSATION BOARD, Respondent.

Decided April 26, 2018

Facts: Claimant injured himself stepping into a pothole on employer premises. The case was established for injuries to the right knee, right shoulder, bilateral hips and neck. Claimant had two prior claims that involved the right knee and required surgery. He also had a prior non-work related motor vehicle accident that involved a fractured pelvis and required surgery. Claimant sought right total knee replacement and left hip replacement surgery under the new claim and carrier denied authorization. Depositions were completed and the Law Judge held that the procedures should be authorized. The carrier appealed and the Board Panel Affirmed. This appeal ensued.

Holding: Affirmed.

Discussion: Whether the need for surgery was causally related is a factual issue wherein the Board has discretion to assess the credibility of medical witnesses, as the decision was based on substantial evidence it will not be disturbed.