

**STEWART, GREENBLATT, MANNING & BAEZ**

**ATTORNEYS AT LAW**

MADGE E. GREENBLATT (RET.)  
ROBERT W. MANNING  
RICARDO A. BAEZ  
DAVID J. GOLDSMITH  
PETER MICHAEL DeCURTIS  
LAURETTA L. CONNORS  
JOHN K. HAMBERGER  
LISA LEVINE  
ANDREA L. De SALVIO  
KRISTY L. BEHR  
RAYMOND J. SULLIVAN  
LUKE R. TARANTINO  
THOMAS A. LUMPKIN  
DIANE P. WHITFIELD

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)  
KAFI WILFORD (2003-2010)  
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY  
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Rucio SANCHEZ, Appellant,  
v.  
JACOBI MEDICAL CENTER, Respondent.

WORKERS' COMPENSATION BOARD

April 1, 2021

Facts: This is the same case that reached the Third Department in 2020 at which time the Court found that periods of temporary total disability following the classification of a claimant and the onset of the durational cap benefits do not count against the number of weeks in the capped benefit period. With the earlier decision, the case was remitted to the Board for further development of the record on issues of degree of disability for periods in which the claimant received tentative rates post classification, which periods might apply against the durational limit and whether additional development of the record was required on degree of disability and permanency.

Holding: *Modified.*

Discussion: There were several periods of time in question. For one period the Court found that the Board erred in classifying the claimant as a permanent partial disability following surgery without evidence that the claimant had reached maximum medical improvement. The Board reversed this portion of the decision pending further development of the record on the appropriate benefit rate and whether it should count against the durational limit. For the second period in question the Court found that the Board's decision was supported by substantial evidence and would not be disturbed. Regarding the period remitted for further development of the record the Court found that the Board had abused its discretion in reclassifying the claimant as a permanent partial disability without providing the claimant notice and an opportunity to be heard. This follow up to the previous

decision in this claim is germane to the specifics of the claim rather than expanding on the prior decision that carved out periods of temporary total disability from the durational cap period.

*Stewart, Greenblatt, Manning & Báez*