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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Veronica GARLAND, Appellant

v

NEW YORK CITY DEPARTMENT OF CORRECTIONS, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

April 14, 2022

**Facts:** The claimant had an injury that was established for multiple sites in 2011, including the right arm. He sustained a prior injury in 2009 for which he was found to have a loss of use of 22.5% to the right arm. In regard to the 2011 case the claimant was found to have a 60% loss of wage earning capacity and because the claimant returned to work at pre-injury wages, she was not entitled to any schedule loss of use to the right arm attributable to the 2011 case. Following the court's decision in *Matter of Arias v. City of New York* (182 AD3d 170 (3<sup>rd</sup> Dept., 2020), claimant sought to reopen the 2011 case in order to receive the schedule loss of use award. During the litigation the self-insured's consultant noted the claimant has a total schedule award of 20% to the right arm. The judge agreed and the claimant appealed having alleged the consultant was not credible in light of the prior schedule award of 22.5% in the 2009 claim.

**Holding:** *Affirmed.*

**Discussion:** The Court confirmed the Board is vested with discretion to resolve conflicting medical opinions. The Board was not precluded from crediting the consultant's opinion and finding of no increase in the schedule award.