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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of DANIEL G. SEMRAU, Appellant,
v.
COCA-COLA REFRESHMENTS USA INC., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

December 17, 2020

Facts: This concerns an established claim for an injury to the left knee and tear to the left medial hamstring where a finding of a 0% schedule loss of use the left leg was made. The meniscal tear had required surgery. The claimant's doctor offered a permanency opinion of 25% schedule loss of use and testified that this was for the significant hamstring injury and should be treated as a special consideration similar to hip and femur impairments for quadricep rupture under the 2018 Impairment Guidelines. The consulting doctor awarded a 10% schedule loss of use for the hamstring impairment. Both doctors had measured full range of motion. The Law Judge found the treating doctor more credible and awarded a 25% schedule loss of use and the carrier appealed. The carrier conceded to the 10% found by its consultant in the appeal but the Board Panel instead found that since no special consideration applied, there was a 0% loss of use. The claimant now appeals to the Court.

Holding: Reversed.

Discussion: Entitlement to a schedule award is a factual question for the Law Judge to resolve based upon substantial evidence. The Board's finding that no SLU award could be made because "no special consideration applies to a hamstring tear" does not take into consideration that the 2018 guidelines specifically permit an SLU award to be based on a permanent residual deficit caused by physical damage to a muscle, such as a hamstring. The Impairment Guidelines provide only useful guidance; however, the Board's determination must be supported by substantial evidence.

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