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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Thomas JOHNSON, Appellant,

v.

CITY OF NEW YORK, Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

February 6, 2020

**Facts:** This claimant had a work-related injury in February 2006 which was established for both knees. The claimant then had a subsequent claim for injuries in November 2009 established for the neck, back, right shoulder, and both hips. The claimant first received a schedule loss of use in the 2009 claim for 50% of the left leg and 52.5% of the right leg. Schedule loss of use was then litigated in the 2006 claim, and the Law Judge found an 80% schedule loss of the left leg and a 40% schedule loss of the right leg. The Judge reduced that by the prior schedules and awarded a 30% to the left leg and 0% to the right leg. The Board affirmed finding that the hips and knees are not eligible for separate schedule awards because they are both encompassed by the legs.

**Holding:** Affirmed.

**Discussion:** The Court notes that Section 15(3) of the Workers' Compensation Law does not list the hip or knee as a body part or member lending themselves to separate schedule awards, but rather lists the legs as the applicable member. The Court found that to authorize separate schedule awards for a body-parts subparts would be a windfall for the claimant and compensate them beyond the degree of impairment actually sustained. Therefore, the Board properly deducted the prior schedule loss of use.