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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Christina OSHIER, Appellant,

v.

NEW YORK STATES DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION, Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

February 6, 2020

Facts: This claim for a left shoulder injury ultimately resolved in a 55% schedule loss of use of the left arm. The award was for \$116,917.94, and claimant's counsel requested an attorney fee of \$18,000. The Law Judge awarded fees of \$9,225, and on appeal by claimant's counsel, the Board further reduced the fee to \$8,000.00.

Holding: Affirmed.

Discussion: Section 24 of the Workers' Compensation Law "vests in the Board broad discretion with regard to the approval of counsel fees, and such approval will be disturbed by this Court only if it is arbitrary, capricious, unreasonable or otherwise constitutes an abuse of the Board's discretion." The Board's regulations provide that the Board shall approve a fee commensurate with the services rendered and having due regard for the financial status of the claimant, and whether the attorney engaged in dilatory tactics or failed to comply in a timely manner with Board rules. Here, the Court noted that a total of 17.9 hours were spent performing legal services, and the case was already established by the time claimant's counsel was retained. The Court notes that the desirability of the result and the claimant's agreement with the requested fee are not relevant considerations.