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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Kevin BRENNAN, Appellant,
v.
VILLAGE OF JOHNSON CITY et al., Respondents

WORKERS' COMPENSATION BOARD, Respondent.

February 9, 2023

Facts: This had been an established claim for Workers' Compensation benefits from a 1995 accident. The claim was established to the bilateral hips and back. The claimant was subsequently found to have violated Section 114-a of the Workers' Compensation Law with a permanent disqualification from future indemnity benefits. That was affirmed by the Court. The case was reopened and litigated on additional sites and schedule loss of use, and ultimately the claim for consequential gastrointestinal conditions were disallowed, and the claimant was found to have a 45% schedule loss of use of the left leg. However, the claimant was not entitled to payment for the schedule loss of use because of the previous disqualification.

Holding: *Affirmed.*

Discussion: On the issue of the consequential condition, the Court noted that the Board is empowered to make a determination on the factual issues of causal relationship, and the decision will not be disturbed if supported by substantial evidence. The Court had noted that the claimant's treating doctor and the independent medical examiner both testified that it was difficult to state that the gastrointestinal conditions were related to the claimant's medications, and only testified to the possibility that it was. The Court deferred to the Board's credibility conclusions and found the decision was supported by substantial evidence.

Regarding the determination that the claimant's schedule loss of use award was disqualified under the WCL 114-a determination, the Court found that the plain language of Section 114-a applies to schedule loss of use. Section 114-a "limits the application of the outlined penalties to wage replacement benefits awarded pursuant to Workers' Compensation Law Section 15" and Section 15(3) includes both the schedule and non-schedule awards.

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