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Supreme Court, Appellate Division, Third Department, New York

In the Matter of JAMES FRANKLIN, Appellant

v.

NEW ENGLAND MOTOR FREIGHT, et al, Respondents

WORKERS' COMPENSATION BOARD, Respondent

June 30, 2016

Facts: The decedent had a work-related accident. He was eventually found to have a temporary moderate disability. After taking into consideration the claimant's educational and vocational factors, he was found to have suffered a 75% loss of wage earning capacity.

On review, the Board Panel found that while the claimant had a causally related disability, vocational and educational factors cannot be considered when determining a temporary disability rate. Accordingly, the claimant's rate was reduced to the moderate rate. The claimant appeals.

Holding: Affirmed.

Discussion: Factors such as age, education, vocational experience, etc. are only to be taken into account when determining the duration of a claimant's permanent partial disability benefits. In this case, the claimant was only found to have a partial disability, so it was inappropriate for the Law Judge to consider such factors and the Board's decision must be affirmed.