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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Shawn Maloney, Appellant

v.

Wende Correctional Facility, Employer

Decided January 18, 2018

- Facts: The claimant appealed a finding of a 50% schedule loss of use of his right arm, inasmuch as his doctor found a 90% schedule. The claimant also alleged the carrier failed to file a PH 16.2 and waived defenses to challenge his doctor.
- Holding: Affirmed.
- Discussion: The Court confirmed the use of a pre-hearing conference statement would only apply if the claim was controverted. With regard to the difference of medical opinion on schedule loss of use, the Board was within its authority to resolve conflicting medical testimony and accept the opinion of the employer's consultant of a 50% schedule loss of use. In considering same an issue arose as to whether the claimant's doctor could add defects for flexion and abduction. The Board has confirmed these findings are duplicative and are not to be added.