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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Claire DIBENDETTO, Appellant,

v.

ROCHESTER CITY SCHOOL DISTRICT, Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

January 30, 2020

Facts: This claim had initially been established for an injury to the left shoulder. Issues were subsequently litigated on the question of consequential Complex Regional Pain Syndrome and degree of disability. The Workers' Compensation Law Judge amended the claim to include the CRPS and to find a total disability, however the Board, on appeal, modified the decision to rescind the establishment of CRPS and to find a marked partial disability. Claimant appealed to the Third Department.

Holding: Reversed and remitted.

Discussion: With regard to the decision on degree of disability, the Court found that the resolution of credibility issues is the exclusive province of the Board and it's finding of a marked partial disability was supported by substantial evidence and so would not be disturbed. However, with regard to the question of CRPS, the Court found that the Board had failed to review one of the claimant's doctor's reports. The Court notes that "when it appears that the Board's decision may have been based on an inaccurate reading of the record or incomplete facts, it cannot be sustained." The Court has limited power to review and weigh evidence though and cannot determine what decision the Board would have reached if it had considered Dr. Hu's report, so the case had to be remitted to the Board.