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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Robert ENOCH, Appellant,

v.

NEW YORK STATE DEPARTMENT OF CORRECTIONS, Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

January 30, 2020

**Facts:** This claim was for an injury to the right knee. The claimant had been out of work for a period of time and was paid wages by the employer, for which the employer had filed a claim for reimbursement. An Administrative Decision was issued, directing awards as reimbursement to the employer, and an attorney's fee payable as a lien on the reimbursement. The claimant was later found to have a 20% schedule loss of use, and the Workers' Compensation Law Judge directed the remaining reimbursement to the employer as less the \$700 fee that was previously paid. On appeal, the Board found that the employer was entitled to its full reimbursement without reduction, and further modified the original Administrative Decision by rescinding the \$700 fee.

**Holding:** Affirmed.

**Discussion:** "Where an employee ultimately obtains a schedule loss of use award, the 'employer has the right to reimbursement for the full amount of wages paid during a claimant's period of disability from the claimant's schedule award.'" The counsel fees were initially directed as a lien on reimbursement as at the time they were made that was the only source from which they could be paid. When the claimant received a schedule loss of use award however, the claimant was left with an excess from which counsel fees could be paid, and to do otherwise would result in the employer subsidizing the claimant's legal expenses. To the extent this conflicted with prior Board decisions, the Board adequately explained

the departure from precedent and specifically disavowed the prior decisions, stating they should no longer be followed.

*Stewart, Greenblatt, Manning & Báez*