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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Cecelia GARRATT-CHANT, Respondent,

v.

GENTIVA HEALTH SERVICES, Appellants

WORKERS' COMPENSATION BOARD, Respondent.

January 30, 2020

Facts: This claimant had a 1998 claim for the lower back, and a subsequent 2010 claim for the neck. Issues were litigated on permanency and apportionment, though a decision was issued only with respect to the claim for the neck, finding a 55% medical impairment, and 50% loss of wage-earning capacity. Subsequently the cases were reopened based on a change in medical condition, and the issues of permanency and apportionment were again litigated. The claimant was found to have a 60% medical impairment and 70% loss of wage-earning capacity, apportioned 65% to the 2010 claim and 35% to the 1998 claim.

Holding: Affirmed.

Discussion: The carrier on the 2010 claim had argued that the Board improperly shifted liability for the back claim, as the effect of this reclassification was to increase the number of weeks of benefits on their file. The Court found that the Board has continuing jurisdiction over cases which includes the power to reclassify injuries. The Board is entitled to resolve conflicting medical opinions and was entitled to make a determination based on the claimant's overall disability, rather than just the neck claim.