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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of STEVEN MANCINI,

v.

OFFICE OF CHILDREN AND FAMILY SERVICES, et al.,

and

WORKERS' COMPENSATION BOARD, Respondent.

Decided: June 29, 2017

Facts: Claimant was a Youth Division Aide at a juvenile facility for incarcerated youths. There was an established work-related injury to the left shoulder and left hip. The claimant was found to have a permanent partial disability with a 50% schedule loss of use of the left arm and was awarded compensation benefits. Following the exhaustion of the benefits, the claimant sought entitlement to additional compensation under Section 15(3)(v) of the Workers' Compensation Law. The Judge determined that the claimant was entitled to the additional compensation and that the award was not subject to the durational limitations of Workers' Compensation Law Section 15(3)(w). The Board modified the Judge's decision finding the additional compensation award was subject to the durational limitations set forth in Workers' Compensation Law Section 15(3)(w). The Judge ruled that the claimant had a 37.5% loss of wage earning capacity entitling him to 275 weeks of benefits. As of 6/4/2011, which was the date that the schedule loss of use award ended. The Board modified the Decision finding the effective date of loss of wage earning capacity benefits was the date of the loss of wage earning capacity finding which was that of 7/21/2014, which is the date of the hearing. A cross appeal ensued.

Holding: The Court *affirmed* the Board's findings.

Discussion: The claimant contended the Board erred in finding that the additional benefits awarded pursuant to Section 15(3)(v) are subject to durational limits set forth in Workers' Compensation Law Section 15(3)(w) was an error. The Court noted that Section 15(3)(v)

provides additional compensation payable for impairment of wage earning capacity following termination of a scheduled award for a schedule loss of use of 50% or more of a specific body part. The Court noted the impairment of earning capacity is due solely to the established injury. The Court found that the legislative intent was to award additional compensation for the most serious of schedule awards. The Court went on to indicate that Workers' Compensation Law Section 15(3)(w) pertains to all other cases of permanent partial disability not subject to a schedule award. The Court, upon review of this matter, noted that the statutory language did not prohibit application of the provision regarding durational period referable to benefit payments. The Court essentially found the Board's decision represented a rational interpretation and an application of relevant statute and the Court would not disturb it. Regarding the appeal filed by the carrier, regarding the Board's change in the effective date from 2011 to 7/21/2014, the Court held that Section 15(3)(v) authorizes additional compensation for certain permanent partial disabilities which is calculated in accordance with Workers' Compensation Law Section 15(3)(w) to determine the amount of duration in consideration of the claimant's loss of wage earning capacity. The Court noted that the claimant was already classified in 2009 with a permanent partial disability and received schedule loss of use benefits. The claimant reopened his claim and received reduced earnings from 6/4/2011 to 7/21/2014. Given the additional compensation is sought pursuant to Workers' Compensation Law Section 15(3)(v), the Court did not find the Board's determination as to the effective date of durational limits to be irrational and therefore, did not disturb it.

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