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Supreme Court, Appellate Division, Third Department, New York

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of MAURICE BLUE, Appellant

v.

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES, Respondents

and

WORKERS' COMPENSATION BOARD, Respondent

June 2, 2022

Facts: Claimant sustained an injury to the right leg. After the attending physician concluded that the claimant had reached maximum medical improvement, the physician found a schedule loss of use of 50% of the right leg, however, the doctor noted that the specific diagnosis of chondromalacia patella required the application of a special consideration that limited the claimant's schedule loss of use value to 7 ½% to 10% of the knee. The doctor therefore submitted a report finding a 10% loss of use of the right leg. The employer's physician examined the claimant and found a 50% schedule loss of use. Medical testimony was not obtained. The parties did submit Memorandum of Law in support of their respective positions. The Judge thereafter found a 50% schedule loss of use based upon range of motion deficits supported by both opinions on permanency. The carrier appealed the decision and the Review Panel reversed finding that based upon the special consideration, the claimant's schedule loss of use should be 10% of the knee.

Holding: *Rescinded.*

Discussion: The Court agreed that the Medical Impairment Guidelines did not serve as a bar to a higher schedule loss of use when one of the special considerations was applicable. The Court reviewed the 1996 Medical Impairment Guidelines as well as the amendments made in 2018. Specific to knee injuries, the Court ruled that the limitation of the schedule loss of use award to the percentage listed in the special consideration for chondromalacia ignored the other findings made by both doctors including the fact that the claimant had a medial meniscal tear and range of motion deficits. The Court held that the Guidelines was not intended to ignore these additional findings and limit the overall schedule loss of use award. The Court noted that the special consideration might be applicable in the absence of other findings, however, when there were other findings present that would serve to increase a schedule loss of use, those factors had to be taken into consideration.

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