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Supreme Court, Appellate Division, Third Department, New York

In the Matter of CZESLAW JAGIELLO, Appellant
v.
AIR TECH LAB, INC., Respondents

WORKERS' COMPENSATION BOARD, Respondent

Decided June 24, 2021

Facts: Appeal from decision which ruled claimant was entitled to concurrent awards.

The claimant had an established Workers' Compensation claim for occupational disease affecting various areas that became disabling in 2017. There was also a prior claim established for distinct injuries arising out of his work at the World Trade Center site. Under the World Trade Center claim, the claimant was receiving \$400.00 per week in Workers' Compensation benefits as a temporary partial rate from February 2018 onward. The Workers' Compensation Board ultimately noted that in the absence of the complicating factor of the prior World Trade Center claim, the claimant would be entitled to \$480.71 per week in the Workers' Compensation claim from February 2018 onward. The Board determined the claimant could not receive a concurrent award in excess of \$801.32 a week, however, and therefore awarded \$401.32 a week under the occupational disease claim at the temporary partial disability rate. The claimant appealed.

Holding: *Affirmed.*

Discussion: The Court noted that the claimant essentially was arguing that the statutory cap regarding the date of disablement in the occupational disease claim was \$870.61 per week, not \$801.32 per week, and therefore, the Board should have awarded him \$470.61 a week in benefits under the occupational disease claim. The Court disagreed with this reasoning.

The Court reviewed Workers' Compensation Law Section 15(6) in its decision, noting that the claims arising between July 1, 2017 and June 30, 2018, the benefit rate would be two-thirds of the New York State average weekly wage for that period. This would note that the benefit could not exceed \$870.61 per week. As two-thirds of the claimant's average weekly wage on the date of disablement was \$801.32 and there was no dispute as to whether the degree of disability finding in the occupational disease claim represented an overall degree of disability finding, the Board determined that the concurrent awards could not exceed the total disability rate. The Court went on to indicate that the Board's determination to limit the award upon claimant's occupational disease claim so that the concurrent award would not exceed \$801.32 a week was proper.

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