

STEWART, GREENBLATT, MANNING & BAEZ
ATTORNEYS AT LAW

DAVID J. GOLDSMITH
PETER M. DeCURTIS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
NICOLE A. SUISSA
JONATHAN R. BAEZ
DIANE P. WHITFIELD

ROBERT W. MANNING
MADGE E. GREENBLATT
RETIRED

6800 JERICHO TURNPIKE
SUITE 100W
SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1976-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RICARDO A. BAEZ
MARIA E. CRETA
JAMES MURPHY
MONICA O'BRIEN
NABISUBI MUSOKE
SACHEE N. ARROYO
OF COUNSEL

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

In the Matter of the Claim of

JOSEPH QUOMA, Appellant,

v.

BOB'S DISCOUNT FURNITURE et. al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

June 12, 2025

Facts: Claimant was injured in a work-related accident, and his subsequent claim for benefits was established for injuries to his back, thoracic spine and both shoulders. Awards were made at various rates for periods of temporary disability and lost time between December 2017 and April 2021. Additionally, MMI, with respect to claimant's thoracic spine, was established in April of 2021. In a June 2022 decision, the Law Judge directed the parties to produce medical evidence of permanency and in November of 2022, a decision was issued that classified claimant as having a permanent partial disability with a loss of wage-earning capacity of 65%, entitling him to 375 weeks of compensation at the specified rate. Further, the employer's workers' compensation carrier was entitled to a credit against the number of statutory cap weeks based upon its payment of 78.8 weeks of awards to claimant for periods of temporary partial disability after June 16, 2020 – the 130th week following the accident of record. Claimant argued that the carrier was precluded from taking a credit based on the “safety valve provision” in Workers' Compensation Law § 15(3)(w).

Holding: *Reversed and Remitted to the Board for further consideration*

Discussion: The primary focus of this matter centered around § 15(3)(w) which provides a credit to the employer or carrier against the maximum benefits payable for a permanent partial disability for any temporary disability payments made to a claimant for periods extending beyond 130 weeks from the date of accident or disablement. That amendment also created a “safety valve provision”, preventing the implementation of such a credit, for claimants that have not in fact reached

MMI at the 130-week mark. However, four requirements must be met for the safety valve provision to apply: (1) permanency is at issue, (2) claimant has submitted medical evidence that he or she is not at MMI, (3) the [employer or carrier has produced or has had a reasonable opportunity to produce an independent medical examination concerning MMI, and (4) the Board has determined that the claimant is not yet at MMI.

Claimant's argument that the carrier's credit may not begin until the carrier has actually paid 130 weeks of temporary partial disability benefits, was rejected. There is no such requirement in § 15(3)(w). The credit applies to temporary disability compensation paid **for periods after or beyond** 130 weeks from the date of the accident or disablement.

However, regarding the issue of MMI, the Workers' Compensation Board expressly clarified its policy regarding findings as to whether a claimant is at MMI for the purposes of determining entitlement to safety valve relief. In that regard, a claimant is not required to request a hearing at the 130-week mark to preserve their ability to invoke the provision. The Board declared that if the issue is not raised until permanency is ripe, it will look back and analyze the evidence in the record around the 130th week to make a finding as to whether the claimant was or was not at MMI at that time. While there was no C-4.3 filed around the 130-week mark in this matter, (a C-4.3 is not explicitly/statutorily required in this instance) there was ample evidence in the administrative record concerning claimant's preauthorized, causally-related surgery to his right shoulder. The mere assertion of the possibility of future surgery is not a bar to MMI, **but a finding of MMI is inappropriate where a claimant both qualifies for surgery and has specific plans for surgery, including an active request for preauthorization**, if required.

In light of the foregoing, and because the Board failed to make any clear findings as to the other safety valve factors, the previous decision was reversed and remitted for a new determination based upon the record evidence..