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Supreme Court, Appellate Division, Third Department, New York

In the Matter of PAUL SHEETS, Appellant  
v.  
AIRY RIDGE FARM, LLC, et al., Respondent

And

WORKERS' COMPENSATION BOARD, Respondent.

Decided: July 19, 2018

Facts:

A stipulation was entered by the parties wherein findings were entered classifying the claimant with a permanent partial disability and a 45% loss of wage earning capacity. Additionally, during the course of the hearing, it was noted that there would be a 45% disability. The claimant was advised by his attorney that if he went out of work at all, the rate would be \$169.65. At the time of classification, the claimant was working at reduced earnings and was entitled to a rate of \$125.00 per week. A decision was issued consistent with the parties' stipulation. A loss of wage earning capacity was established at 45% and benefits were continued at a \$125.00 per week rate. The claimant stopped working one week after the hearing.

A hearing was scheduled and the claimant made an application that benefits should be increased. At this hearing, the Administrative Law Judge increased awards to the temporary total rate of \$377.00 per week from August 8, 2016 through September 19, 2016 and then from September 19, 2016 to October 14, 2016 benefits were awarded at a partial rate of \$282.75 per week. The carrier filed an appeal requesting that awards subsequent to August 8, 2016 be directed at the \$169.65 rate which would correspond to the stipulation entered of a 45% loss of wage earning capacity and 45% disability. The Board Panel modified the Judge's Decision and the claimant appealed the Board Panel's Decision.

Holding: *Affirmed.*

Discussion: The Court agreed that wage earning capacity and loss of wage earning capacity are distinct concepts and went on to further indicate that wage earning capacity is used to determine a claimant's rate of compensation taking into consideration the nature of his or her injury and his or her physical impairment. The Court noted that loss of wage earning capacity (is used at the time of classification to set the maximum number of weeks over which the claimant, with a permanent partial disability, is entitled to receive benefits." The Court further noted that in the instant claim, the parties entered into a stipulation resolving the matters by agreement. Specific discussion was had that if the claimant stopped working following his classification and was found to be entitled to benefits, the weekly rate would be \$169.65 based upon his "45% disability." The stipulation was approved by the Law Judge and incorporated into the Decision. The stipulation was binding on all parties.

Stewart, Greenblatt, Manning & Povel