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Supreme Court, Appellate Division, Third Department, New York

Matter of MOHAMMED TAHER, appellant,
v
YIOTA TAXI, INC. et. al, respondents,
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided June 14, 2018

Facts: Claimant injured his neck, back, right knee, and right shoulder as the result of a work-related MVA. Claimant's counsel argued that because claimant returned to work at pre-injury wages, claimant should receive an SLU award for his knee and shoulder. Claimant was classified with non-schedule cervical spine condition and lumbar spine condition. The Board found that claimant is not entitled to both an award for SLU and a non-schedule PPD classification for injuries sustained in the same work-related accident. Claimant appealed.

Holding: *Modified and reversed.*

Discussion: In the unique circumstance where no initial award is made based on a Non-schedule PPD classification, a claimant is entitled to an SLU award. Claimant may ultimately receive an SLU award notwithstanding his non-scheduled classification for the injuries that he sustained in the underlying work-related accident. Claimant may not, however, receive both an SLU award and nonscheduled award for the impairments that he sustained in the same work-related accident. If it is determined that the claimant is not entitled to a nonscheduled award, he will at that time be entitled to an SLU award.