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Supreme Court, Appellate Division, Third Department, New York

Matter of KRISTI M. TOBIN, appellant,
v
FINGER LAKES DDSO. et. al, respondents,
and
WORKERS' COMPENSATION BOARD, Respondent.

Decided June 14, 2018

Facts: Claimant was punched in the face, and case was established for injuries to the right eye, right optic nerve and neck, as well as post-traumatic headaches and RSD of the right side of the face and tinnitus. The WCLJ found that claimant's vision loss was amenable to a 100% schedule loss of use and that she was also entitled to a schedule award for facial disfigurement. The Board reversed, finding that claimant's RSD is subject to a nonscheduled PPD classification under WCL §15(3)(w). The SLU award was rescinded and the case remitted for development of the record on loss of wage earning capacity. Claimant appeals.

Holding: *Affirmed.*

Discussion: Whether an SLU or PPD is appropriate constitutes a question of fact for the Board and its determination will be upheld if supported by substantial evidence. A nonscheduled PPD classification, rather than SLU, is indicated where there is a continuing condition of pain or continuing need for medical treatment or the medical condition remains unsettled. Claimant's own physician found that the RSD condition is an ongoing chronic condition that will have periodic flare-ups for the rest of claimant's life. The decision is affirmed as there is substantial evidence to support it.