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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of David MAYEWSKI, Appellant
v.
SUPERIOR PLUS ENERGY SERVICES, Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

March 11, 2021

Facts: The claimant suffered second and third degree burns to his right arm, right leg, and abdomen. They covered 12.5% of her body and necessitated skin grafts. The claimant eventually returned to work at pre-injury wages and his doctor provided a permanency opinion giving a SLU to the arm and leg as well as a 3G ranking for the torso and skin. After litigation, the Judge found that the claimant's condition was amendable to a nonscheduled classification. On appeal, the Board Panel agreed, and this appeal ensued.

Holding: *Affirmed.*

Discussion: Not all injuries to an extremity are amenable to a schedule award, particularly if there is a chronic and painful condition present. The issue here is not whether the claimant is entitled to be awarded an SLU and classification simultaneously, but rather whether the Board properly determined that the claimant's condition was amenable to classification. This is a question of fact for the Board and its findings will be affirmed as long as there is substantial evidence to support it, which there was here.