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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Tony WARD, Claimant,

v.

NYC TRANSIT AUTHORITY, et al., Appelants,

WORKERS' COMPENSATION BOARD, Respondent.

March 30, 2023

**Facts:** The claim was established and eventually the Law Judge made schedule loss of use awards consistent with the claimant's doctor's opinion. The carrier appealed arguing that the claimant's doctor was not credible, that his opinion was not consistent with the guidelines, and failed to take into account the claimant's prior condition. The Board Panel issued a detailed decision affirming the Law Judge's opinion. The carrier requested Full Board Review, which was denied, and appealed from both the Board Panel's decision as well as the denial of Full Board Review.

**Holding:** *Affirmed.*

**Discussion:** The claimant's doctor was the only witness to offer an opinion regarding permanency and while he indicated that his opinion did not strictly comport with the guidelines, he gave a reasonable explanation as to why this was the case, considering the claimant's condition as a whole and the diagnostic studies. The Court noted that the guidelines need not be followed "slavishly." Inasmuch as the Board's decision was based on substantial evidence, it must be affirmed.

The Court also rejected the carrier's argument that the Board had erred in denying its application for Full Board review. For same to succeed, it would have to be shown that there was new evidence, that there had been a material change in condition, or that the Board Panel had failed to consider an issue raised in the appeal. This did not occur here.

*Stewart, Greenblatt, Manning & Báez*