

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)

KAFI WILFORD (2003-2010)

MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of BERNADETTE DAVENPORT, Appellant

v.

DISTRICT ATTORNEY OF RICHMOND COUNTY, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

May 26, 2022

Facts: The Workers' Compensation Board issued a Proposed Decision noting a difference in medical opinion on schedule loss of use and directing the parties to either reach an agreement or depose medical witnesses within 90 days. Subsequently, without any medical testimony being obtained and without any agreement, a Judge deemed the record closed and found that the claimant was not entitled to a schedule loss of use award. The claimant appealed that finding, the Review Panel affirmed. The claimant filed a Request for Full Board Review that was denied. The claimant appealed that decision.

Holding: *Affirmed.*

Discussion: The Court found no abuse of discretion in the Board Panel adopting the Workers' Compensation Law Judge's findings in the decision determining that the claimant had no schedule loss of use. With regard to the merits of permanency, the Court held that it is

exclusively within the Board's province to resolve conflicting medical opinions and that the decision would not be disturbed if supported by substantial evidence. Herein, the Judge and Board reviewed the opinion of the respective parties and determined that there was no permanency. The Court held that substantial evidence supported that decision.

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