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State of New York Court of Appeals

In the Matter of the Claim of

MICHAEL GAROFALO, Appellant,

v.

VERIZON NEW YORK, INC., et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

May 30, 2024

Facts: Claimant had an established work related injury to the left hand and average weekly wage was established. Claimant's treating physician found a 40% SLU of the left hand. Employer's consultant found a 35% SLU of the left hand but later revised his opinion to based on the Workers Compensation Guidelines to 50% SLU of the left hand. The workers compensation law judge ("WCLJ") found a 35% SLU of the left hand based on the consultant's initial opinion. Upon administrative appeal, the Board upheld the WCLJ's decision. Claimant appealed.

Holding: *Reversed and remitted.*

Discussion: The court agreed with Claimant that the Board erred in relying on the consultant's reports because they improperly applied the 2012 guidelines to this case instead of the updated 2018 guidelines. Accordingly, the Board was ordered to determine anew the appropriate SLU percentage using the 2018 guidelines. The Board was further guided that it may permit the parties to submit additional evidence.