

STEWART, GREENBLATT, MANNING & BAEZ

RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
NICOLE A. SUISSA
JONATHAN R. BAEZ
DIANE P. WHITFIELD

ROBERT W. MANNING
MADGE E. GREENBLATT
RETIRED

6800 JERICHO TURNPIKE
SUITE 100W
SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1976-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

MARIA E. CRETA
JAMES MURPHY
MONICA O'BRIEN
NABISUBI MUSOKE
SACHEE N. ARROYO
OF COUNSEL

State of New York Court of Appeals

In the Matter of the Claim of

RAYMOND R. GARROW Appellant,

v.

LOWE'S HOME CENTERS INC. et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

May 16, 2024

Facts: Claimant injured his left shoulder and bicep in the course of his employment in 2004. The employer was apprised of the injury, and Claimant did not seek medical attention until 2014, and his claim was subsequently established. The following year the parties stipulated to a 45% schedule loss of use ("SLU"). Five years later, Claimant underwent an additional surgery. Claimant's consultant concluded he sustained a 33.33% SLU of his left arm/shoulder. The consultant filed an addendum and therein as well as in his deposition and hearing concluded that Claimant sustained injuries to his left shoulder beyond those initially stipulated (specifically, a rotator cuff tear) and was therefore entitled to a greater percentage than the SLU award allocated under special consideration 6 of the Workers' Compensation Guidelines ("2018 Guidelines"). The Employer and Carrier disagreed, asserting that Claimant was limited to a 33.33% SLU. The Worker's Compensation Board ("WCB") agreed and affirmed the same upon review. Claimant Appealed.

Holding: *Modified in part, and remitted.*

Discussion: The basis for this holding rests in the authoritative finding in *Matter of Blue v. New York State Off. of Children & Family Servs.* The Claimant in *Blue* had a 50% SLU due to causally related tear and additional diagnosis, but the WCB found the additional diagnosis merited special consideration per the 2018 Guidelines. The Claimant in that case appealed, and the court modified the WCB's decision because the special consideration improperly limited the award since the additional diagnosis was not the

only basis for the SLU award. The Carrier asserted *Blue* only applied to the knee, and this Court disagreed and held the 2018 Guidelines for Determining Impairment applies equally to shoulder impairment due to *both* a condition governed by special consideration as well as a diagnosis not governed by special consideration.

The Carrier further argued lack of sufficient medical proof to establish the additional deficits, therefore supporting the WCB's finding. While the WCB does have vested purview to determine SLU based on medical evidence, the WCLJ did not reflect any consideration of the medical proof adduced, and appeared to base its finding instead on its erroneous application of *Blue*. Therefore, the matter was remitted to the WCB so that it could properly assess the evidence.

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