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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Kanye Khalid GREEN, Appellant,

v.

DUTCHESS COUNTY BOCES, Respondent

WORKERS' COMPENSATION BOARD, Respondent.

March 5, 2020

Facts: The injured worker in this claim was classified with a permanent partial disability and found to have a loss of earning capacity of 51%, entitling him to a cap of 350 weeks. However, he died of unrelated reasons before the cap expired leaving 38.8 weeks unpaid. The claimant, who was the worker's child, asked for the balance to be paid to him. The Law Judge denied this request as did the Board, finding that the claim abated with the injured worker's death. This appeal ensued.

Holding: Reversed.

Discussion: In rendering its decision, the Court noted the questions before it were of statutory interpretation. The plain language of WCL §15(4) applies to both schedule loss of use awards and classifiable conditions, and there is no reason to distinguish between the two. This being the case, just as a posthumous schedule loss of use is payable to the individuals listed in WCL §15(4)(a-d) (widow, children, etc.), so should a non-schedulable permanent disability award. The Court further found that inasmuch as recent legislative changes and court decisions have been moving in the direction of treating non-schedule and schedule loss of use awards similarly, it is appropriate that they should do so as well.

Finally, the Court took no position regarding how the remaining cap weeks should be paid to the surviving beneficiary (in a lump sum or in bi-weekly payments), and this would presumably be left to the Board to decide.

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