

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677
FAX 516-433-4342

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL

DONALD R. STEWART (RET.)
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
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

Supreme Court, Appellate Division, Third Department, New York

In the Matter of Joseph D. LIUNI, Appellant,

v

GANDER MOUNTAIN et al., Respondents

and

Workers' Compensation Board, Respondent

November 12, 2020

Facts: The claimant previously ruptured his left distal bicep tendon while working and was granted a 22.5% SLU award for the left arm. The claimant subsequently injured his right shoulder and established a workers' compensation claim for his right shoulder that was later amended to include a consequential injury to his left shoulder. Based upon his examination of claimant's left shoulder claimant's physician opined that claimant sustained a 27.5% SLU of the left arm. The Board determined that claimant's injuries to his left bicep and shoulder are not eligible for separate SLU awards because they are both encompassed by SLU awards for the left arm. Accordingly, the Board found that claimant's 27.5% SLU for the impairment of the left arm must be reduced by the prior 22.5% SLU for that body member, resulting in a 5% SLU award for the left arm.

Holding: *Affirmed.*

Discussion: The Court noted that Workers' Compensation Law § 15(3) sets forth SLU awards that the Board may make resulting from permanent injuries to certain body parts, losses of hearing or vision and facial disfigurements. A SLU award is

compensation for the residual permanent physical and functional impairments of an extremity, not for the particular injury itself. Although more than one SLU award may be given for a loss of use of more than one member or parts of one member, the SLU award is limited to the statutory-enumerated members set forth in Workers' Compensation Law § 15(3). The Court held that separate SLU awards for a body member's subparts is not authorized by statute or the guidelines and would amount to a monetary windfall for a claimant that would compensate him or her beyond the degree of impairment actually sustained to the statutorily-enumerated body member.

Stewart, Greenblatt, Manning & Báez