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Supreme Court, Appellate Division, Third Department, New York

Matter of Thomas MINICHIELLO, Appellant,

v.

NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES et al., Respondents

and

Workers' Compensation Board, Respondent.

November 12, 2020

Facts: The parties stipulated to a finding of a permanent partial disability and a 51% loss of wage-earning capacity. Claimant was awarded workers' compensation benefits for a maximum of 350 weeks. After claimant had surpassed his maximum number of benefit weeks, he submitted a request for further action seeking to be classified with a total industrial disability. The request was denied due to insufficient evidence. The Board concluded that consideration of claimant's application for total industrial disability is not warranted because he was not entitled to additional indemnity benefits inasmuch as he had surpassed the cap of his maximum weeks of benefits under Workers' Compensation Law § 15(3)(w). The Board further concluded that Workers' Compensation Law § 35 does not contemplate continuing awards beyond the statutorily capped weeks unless the claimant is seeking an extreme hardship redetermination pursuant to Workers' Compensation Law § 35(3).

Holding: Reversed.

Discussion: The Court noted that the 2007 legislative reforms also included the enactment of Workers' Compensation Law § 35 which was intended to create a possible safety net for claimants who sustain a permanent partial disability and have not returned to work after they have reached their limit on weeks of indemnity payments. Pursuant to Workers' Compensation Law § 35(2), “[n]o provision of this article shall in any way be read to derogate or impair current or future claimants' existing rights to apply at any time to obtain the status of total industrial disability under current case law.” The Court found that given the plain language of the statute, a claimant's right to seek total industrial disability status at any time remains, notwithstanding other statutory provisions of article two of the Workers' Compensation Law, as well as the clear legislative intent of Workers' Compensation Law § 35.

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