

STEWART, GREENBLATT, MANNING & BAEZ

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
SACHEE N. ARROYO
OF COUNSEL

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of JOSEPH BIRRO, JR., Appellant

v.

WOLKOW-BRAKER ROOFING CORP., Respondents

and

WORKERS' COMPENSATION BOARD, Respondent

Decided November 16, 2023

Facts: The claimant had two established Workers' Compensation claims while working for the same employer, one in 2006 and the other in 2015. In the 2006 claim, the parties stipulated the claimant had an 18.75% schedule loss of use for the left leg. The 2015 claim was also established for the left knee, left ankle and back. It was the same employer but a different carrier. There were surgeries subsequent to the second accident and ultimately, in 2018, the claimant was classified with a permanent partial disability and a 59% loss of wage-earning capacity with awards directed.

The carrier secured independent medical examinations on the issue of apportionment and a decision was entered that liability would be apportioned equally between the 2006 and 2015 claims. The Board rescinded the Law Judge's finding based upon inadequacies and/or defects in the respective medical opinions offered and directed that the parties produce clarifying evidence on the issue of apportionment. One of the carriers submitted the clarifying medical and based on the clarifying medical, apportionment was entered of 80% to the 2006 case and 20% to the 2015 claim. Another Appeal was filed, and the Board Panel found apportionment between the two claims inapplicable, and that liability

remained with New Hampshire as the carrier responsible for the 2015 claim. The claimant filed an Appeal.

Holding: *Dismissed.*

Rationale: The Board's decision in no way impacted the claimant's entitlement to awards, only which entity was responsible for those payments. This being the case, the claimant was not aggrieved by the Board Panel decision and therefore, the Court did not have jurisdiction to consider his appeal. Accordingly, the Appeal was dismissed.

Stewart, Greenblatt, Manning & Báez