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Supreme Court, Appellate Division, Third Department, New York

Matter of MOISES SANCHEZ, Claimant

v

STS STEEL et al., Respondents,

and

WORKERS' COMPENSATION BOARD

Decided October 5, 2017

- Facts:** In 2005, the claimant underwent surgery to repair a nonwork-related meniscal tear. He was then involved in a work-related accident in 2007 and ultimately underwent an arthroscopic procedure. After litigating the issue of schedule loss of use and apportionment, the WCLJ found a 30% SLU and apportioned 33 1/3 to the pre-existing condition and 66 2/3 to the work accident. The claimant appealed.
- Holding:** *Affirmed.*
- Discussion:** Generally, apportionment is not applicable as a matter of law where the preexisting condition was not the result of a compensable injury and the claimant was able to perform his or her normal job duties at the time of the work-related accident. A limited exception for apportionment exists when the claim is amenable to a schedule loss of use and had the claimant's prior injury been compensable, it would have also resulted in a schedule loss of use. In this case, the development of the medical record supported the fact that the claimant's prior surgery would have resulted in at least a 7 1/2 % SLU. The Court found that the Board's decision was supported by substantial evidence and therefore should be affirmed.