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Supreme Court, Appellate Division, Third Department, New York

Matter of SIMOD COVINGTON, Appellant,

v

NEW YORK CITY DEPT OF CORRECTIONS et al, Respondents

and

WORKERS' COMPENSATION BOARD, Respondent.

October 1, 2020

Facts: Claimant sustained a work-related injury to his right elbow. The Judge ruled that the claimant had a 22.5% SLU of the right elbow. In determining the SLU award, the WCLJ deducted a prior 10% SLU award in connection with a previous right elbow injury, as well as a 15% SLU award related to a prior right shoulder injury. Because the prior right arm SLU awards totaling 25% exceeded the current 22.5% SLU, the WCLJ found that claimant was entitled to a 0% right elbow SLU for the instant claim. The Board affirmed, and claimant appealed.

Holding: *Affirmed.*

Discussion: Schedule loss of use awards are not given for particular injuries, but they are made to compensate an injured worker for his or her loss of earning power or capacity that is presumed to result, as a matter of law, from the residual permanent physical and functional impairments to statutorily-enumerated body members. As is relevant here, neither the elbow nor shoulder is listed in Workers' Compensation Law § 15 (3) or the workers' compensation guidelines as a statutorily enumerated member or as body parts lending themselves to separate SLU awards. Because claimant's previous awards were for the loss of use and impairment of the right arm, the Board properly credited the total of those prior

SLU awards toward the instant claim involving the right arm, regardless of whether the prior injuries involved the same or separate parts thereof.

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