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Supreme Court, Appellate Division, Third Department, New York

Matter of WILLIAM GARRISON-BEY, Appellant,

v

DEPARTMENT OF EDUCATION, Respondent.

and

WORKERS' COMPENSATION BOARD, Respondent.

October 1, 2020

Facts: Claimant sustained injuries to his neck, back, left knee and left elbow. Both sides produced permanency reports opining on both schedule loss of use, as well as non-schedule classification for the neck and back. The claimant had returned to work at pre-injury earnings, and so at the permanency hearing, the claimant requested a SLU award consistent with the Third Dept. Decision in in Matter of Taher v Yiota Taxi, Inc. (162 AD3d 1288, 1289-1290 [2018]). The Judge denied the request for a SLU award and instead continued the case for testimony on loss of wage-earning earning capacity. The claimant appealed, and the Workers' Compensation Board affirmed, maintaining that because claimant had permanent residual impairments to his cervical and lumbar spine, he was not entitled to a SLU award. Claimant appeals.

Holding: *Modified.*

Discussion: Under Matter of Taher, a claimant who sustains both schedule and non-schedule permanent injuries in the same work-related accident and returns to work at preinjury wages and, thus, has not received a reduced-earnings award based upon a nonschedule permanent partial disability classification, is entitled to an SLU award for permanent partial impairments to the statutorily enumerated body parts.