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New York State Court of Appeals

In the Matter of the Claim of Kanye GREEN, Respondent,
v.
DUTCHESS COUNTY BOCES, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

October 27, 2022

Facts: The claimant was classified with a permanent partial disability and loss of wage-earning capacity. He died due to reasons unrelated to his disability with approximately 39 weeks remaining on the statutory CAP. Claimant's estate requested continuation of the PPD award for the remainder of the CAP, which was denied by the Board. The Third Department reversed, finding that claimant is entitled to an additional posthumous award for the remaining cap weeks. The carrier appealed.

Holding: *Third Department Decision Reversed.*

Discussion: The nature of non-schedule awards, dependent on an employee's actual earnings and the continuance of the disability, is such that there is no remaining portion of the award that can pass to a beneficiary. It is clear that no unaccrued portion of a non-schedule award survives after claimant's death, and the Appellate Division erred by concluding that the statute does not provide for different posthumous treatment of schedule and non-schedule awards.