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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of SUSAN ZUHLKE, Appellant,

v.

LAKE GEORGE CENTRAL SCHOOL DISTRICT et. al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

October 12, 2023

Facts: Claimant sustained compensable injuries to the right knee and right ankle. After differing opinions were offered on the issue of permanency, litigation ensued, with the Law Judge ultimately finding the carrier's consultant's opinion more credible. The claimant appealed and the decision was affirmed. The claimant's application for reconsideration was denied. The Board found the consultant more credible in that he explained his rationale for limiting the schedule award to a specific percentage was due to a special consideration in the Guidelines. Conversely the attending physician was unable to explain how he arrived at his opinion.

Holding: *Affirmed.*

Discussion: Credibility is a factual issue left to the Board to decide, and any ruling that rests on substantial evidence as in this case, will not be disturbed.