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Supreme Court, Appellate Division, Third Department, New York

Matter of ANTHONY GENDUSO, Claimant-Appellant

v

NEW YORK CITY DEPARTMENT OF EDUCATION, Respondent,

and

WORKERS' COMPENSATION BOARD, Respondent

Decided September 6, 2018

Facts: The claimant had sustained an injury to his right ankle and right knee in 1997 that resulted in a 20% schedule loss of use to the right leg. He had a subsequent injury in 1999 to the right knee which resulted in a 12.5% schedule loss of use to the right leg attributable to that injury. The claimant injured his right knee again on October 16, 2013, and schedule loss of use was litigated. The Workers' Compensation Law Judge found a 40% schedule loss of use to the right leg, but subtracted the prior 20% and 12.5% for a 7.5% schedule loss of use for that claim. The claimant had appealed arguing that only 11.5% of the 1997 schedule was due to the knee and rest was for the ankle, so should not have been subtracted. This a

Holding: *Affirmed.*

Discussion: Schedule loss of use awards are not given for particular injuries, but for the residual and physical functional impairments. The ankle and knee are not body parts lending themselves to separate schedule loss of use awards but are encompassed by awards for the loss of use of the leg. Since the 20% was awarded for the loss of use of the leg, it was not improper to deduct it from the 40% found in the 2013 claim. The claimant is precluded from challenging the 20% schedule award with respect to the 1997 injury as he did not seek Board Review from that Decision.