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State of New York Supreme Court, Appellate Division
Third Judicial Department

In the Matter of the Claim of
Tyler Wright, Claimant-Appellant

v.

Elmer W. Davis Inc, et, al., Employer-Respondent
Workers' Compensation Board, Respondent

October 3, 2024

Facts: In 2018, The claimant was injured while stepping into his truck and the claim was established for an injury to the right knee. The claimant later underwent a right knee arthroscopy with chondroplasty in 2019. In 2021, the claimant's treating provider found the claimant reached MMI and assessed a 45% SLU of the right leg based on the claimant's range of motion deficits. The carrier's consultant also found a 45% SLU of the right leg. The claimant's treating provider later submitted a letter modifying his opinion to a 52.5% SLU. The doctor stated that because the guidelines advise that SLU percentages should be adjusted proportionally, the deficits in flexion and extension should be added together. The claimant argued that neither doctor was correct and that when adjusted proportionally the claimant should have been found to have a 51.667% SLU of the right leg. The Law Judge found a 51.667% SLU of the right leg and the carrier appealed. The Board Panel modified the decision finding the claimant sustained a 45% SLU finding that each of the doctor's initial opinions of a 45% SLU were consistent with the 2018 guidelines. The Claimant appealed the decision to the Third Department

Decision: *Affirmed.*

Discussion: The Court reviewed Chapter 7 of the Guidelines for Determining Permanent Impairment which pertains to SLU for the knees. The Court explained that row A of table 7.4 is applicable for flexion deficits and row B is applicable for extension deficits. Row C of table 7.4 is applicable when deficits are present in both flexion

and extension. When there are deficits in both flexion and extension table 7.4 provides ranges of percentages based on whether the range of motion deficits are mild, moderate, or marked. The court then reviewed the medical evidence noting that both sides doctors found 85 degrees of flexion equating to a 40% SLU. The claimant's treating provider found a 30-degree deficit in extension while the carriers consultant found a 25-degree deficit, both equating to a 7.5-10% SLU. The court then noted that both doctors measured flexion and extension deficits that could be characterized as moderate. As row C of table 7.4, provides a range of 40-45% SLU where there are moderate deficits of both flexion and extension, the court affirmed the Boards finding of a 45% SLU noting that it was consistent with the guidelines.

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