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Supreme Court, Appellate Division, Third Department, New York

Matter of KEVIN P. COLLINS, Appellant,

v.

MONTGOMERY COUNTY SHERIFF'S DEPARTMENT, Respondent,

and

TRIAD GROUP, LLC, Respondent.

WORKERS' COMPENSATION BOARD, Respondent.

Decided September 14, 2017

Facts: This is an established claim for injuries to claimant's right knee. The self-insured employer paid full weekly wages from November 29, 2011 to May 30, 2012 and filed a timely reimbursement request. The parties entered into a stipulation, finding claimant sustained a 21% schedule loss of use of his right leg, payable November 28, 2011 to February 16, 2012 at temporary total disability rate, with balance payable at permanent partial disability rate and the self-insured employer was "to take credit for all prior payments." Subsequently, claimant requested a hearing to address whether the employer was entitled to reimbursement out of his schedule award for previously paid full wages and if a late payment penalty should be imposed. At the hearing, the WCLJ found the employer was permitted to obtain reimbursement for full wages paid, there was no underpayment and denied claimant's request for a penalty. The Board affirmed and claimant appealed.

Holding: *Affirmed.*

Disposition: Workers' Compensation Law §25(4)(a) provides, that if advance compensation payments are made by an employer to an employee while claimant is out due to disability, the employer is entitled to reimbursement out of unpaid compensation due, so long as reimbursement is requested before an award is made. Further, "it is well settled that, where a claimant receives a schedule loss of use award, the

employer is entitled to full reimbursement of the payments made during the period of disability.” Here, the employer paid wages and filed a timely claim for reimbursement and the schedule loss of use award “specifically indicated that the employer was ‘to take credit for all prior payments’ ... without distinction drawn between wage, awards or compensation.” The claimant was aware the employer was entitled to take credit for said and there was nothing that indicated “that the employer intended to waive its right to reimbursement”. The Board’s decision was therefore found to be based upon substantial evidence.

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