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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Mario AYARS, Appellant,
v.
NAVILLUS TILE COMPANY et. al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

September 21, 2023

Facts: The claimant sustained an injury to his right knee. Differing opinions were produced on the issue of permanency with the attending physician finding the claim amenable to classification and the carrier's consultant finding a schedule loss of use. A Law Judge found the attending physician's opinion of classification to be more credible. Upon appeal, the Board found instead that the claim was amenable to schedule loss of use but found both doctors' opinions to be inconsistent with the Guidelines regarding applicability of special considerations. The claimant appealed.

Holding: *Reversed and remitted.*

Discussion: Upon review, the Court found the Board's assessment of the medical testimony to be based upon an inaccurate interpretation. Specifically, the Board's interpretation of the consultant's findings regarding flexion and the applicability of special considerations were contrary to the doctor's testimony.

The Board's decision was not based upon substantial evidence. Since questions of fact and credibility rest with the Board, the matter must be remitted for further development of the record in order to ensure that there is an opportunity for an accurate reading of the record taking into consideration all relevant facts. This would include reconsidering the preliminary issue of whether the claim is amenable to classification or schedule loss of use.