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OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

Matter of JAMES CURCIO, Appellant

v

SHERWOOD 370, Respondent

and

WORKER'S COMPENSATION BOARD

Decided February 9, 2017

- Facts:** The claimant was found to have a 90% loss of wage earning capacity. The claimant alleged a permanent total disability. The claimant's attorney appealed the judge's decision regarding same and the board affirmed the finding of 90% and on its own motion reduced the attorney's fee from \$7,290 to \$450.
- Holding:** Affirmed
- Discussion:** The Court determined there was substantial evidence to support the finding of a 90% loss of wage earning capacity. In noting the impairment rating of Class 4 I to the back, it noted that under table 18.1 of the guidelines that is not the equivalent of a total disability. While the claimant's doctor noted a total disability, he conceded the claimant could take care of his activities of daily living and drive. The carrier's doctor noted a marked disability and the claimant could perform full time sedentary work. On vocational factors, the claimant was 52, attended some college and had a primarily physical job. Under these circumstances the Court found no basis to disturb the Board's decision.

Regarding the fee the Court noted that board rules require the application to be "accurately completed" with dates, services and time spent. Counsel listed services rendered and listed the total time spent without dates and time for each date. The Court found the board did not abuse its discretion in reducing the fee. It is interesting to note the Court stated to the extent that decisions in other cases did

not require the attorney to record the amount of time spent on the fee (two decisions from 2017) that said decisions should not be followed.

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