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Supreme Court, Appellate Division, Third Department, New York

Matter of KENNETH J. DECK, Claimant-Respondent

v

DARIN M. DORR dba THE DEER SHOP, Appellants,

and

WORKERS' COMPENSATION BOARD, Respondent

Decided May 25, 2017

**Facts:** This was an established claim for injury to the right hand, when the claimant's hand was caught in a meat grinder, amputating all four fingers and the thumb. The thumb was reattached, but was half the size of the left thumb and lacked pinching ability. By agreement, the Workers' Compensation Law Judge found a 100% schedule loss of use of the hand based on the loss of the four fingers, without consideration of the thumb, and reserved decision on the thumb. The WCLJ found, taking into account loading, a combined schedule loss of use of 157% of the right hand. The Workers' Compensation Board modified this decision, by finding that the claimant has a 100% schedule loss of use of the right hand, and a separate 100% schedule loss of use of the right thumb. The carrier appealed.

**Holding:** *Affirmed.*

**Discussion:** Where a claimant suffers multiple injuries to a hand or other body part, the Board is not limited to a 100% SLU award for separate injuries to the hand or other body part. The Third Department defers to the Board's determination to credit the medical opinion and conclude that the claimant sustained a separate and distinct injury to his thumb, which warranted separate SLU awards for the thumb and fingers. This is supported by the New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning capacity, which under Table 2.4 state that the loss of four fingers constitutes a 100% SLU of the hand, and addresses impairments to the thumb separately, providing that "the thumb

deserves special consideration; it is the highest valued digit and the most important.”

Dissent: While the Board is not limited to a total schedule loss of use of 100% and may assess each injury individually where supported by substantial medical evidence, here the Board’s determination was not supported by substantial evidence. Testimony by the claimant’s physician did not explain how the injury to the right thumb was separate and distinct from the injury to the other four fingers, which is especially critical when all of the fingers were amputated in a single incident.

*Stewart, Greenblatt, Manning & Báez*