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Supreme Court, Appellate Division, Third Department, New York

In the Matter of WANDA SANTIAGO, Appellant

v.

THE NY OPERATORS. et al., Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

May 19, 2016

Facts: Claimant was paid benefits for various periods at a tentative rate and awards were also held in abeyance for a period of time. Later, the claimant was awarded schedule loss of use awards per the employer's IME and the WCLJ made no determination as to the period of time when awards were held in abeyance or paid at a tentative rate, but concluded that the amount of disability paid exceeded the amount of the schedule loss of use plus any protracted healing period. On appeal, the Board found that the claimant was not provided with an opportunity to present evidence as to the percentages of schedule loss of use and the case was restored to calendar for further development of the record. However, regarding claimant's request for a modification of awards both held in abeyance and paid at a tentative rate, the Board concluded that to award the claimant any further awards at this point would be highly prejudicial to the employer.

Holding: *Dismissed*

Discussion: Board decisions that are interlocutory in nature and do not dispose of all the substantive issues or reach a potentially dispositive threshold legal question are not appealable. Therefore, the Court declined to review the Board's decision inasmuch as it has directed further development of the record, so there was no final determination.