

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 4, 2020

530457

In the Matter of the Claim of
JEFFREY BLAIR,
Appellant,

v

MEMORANDUM AND ORDER

SUNY SYRACUSE HOSPITAL et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: May 21, 2020

Before: Egan Jr., J.P., Mulvey, Aarons, Pritzker and
Colangelo, JJ.

Murad and Murad, PC, Utica (Frederick W. Murad of
counsel), for appellant.

Hamberger & Weiss LLP, Rochester (Stephen P. Wyder Jr. of
counsel), for SUNY Syracuse Hospital and another, respondents.

Aarons, J.

Appeal from a decision of the Workers' Compensation Board,
filed May 3, 2019, which ruled, among other things, that
claimant was entitled to a 20% schedule loss of use award of his
right arm.

Claimant established a claim for a 1995 work-related
injury to his right elbow and was awarded a 25% schedule loss of

use (hereinafter SLU) of his right arm. In 2017, claimant suffered a work-related injury to his right shoulder and underwent, among other things, distal clavicle excision surgery. Based upon an independent medical examiner's evaluation of the impairment as a result of claimant's shoulder injury, claimant was found to have a 45% SLU of his right arm. In determining the SLU award, a Workers' Compensation Law Judge deducted the prior 1995 SLU award of 25% from the instant SLU, resulting in a 20% SLU award for the instant claim. By decision filed May 3, 2019, the Workers' Compensation Board affirmed. Claimant appeals.

Claimant contends that the 45% SLU was solely attributable to his right shoulder injury and that the SLU award should not have been reduced by the prior 1995 SLU award related to his right elbow injury. Workers' Compensation Law § 15 (3) sets forth the SLU awards that the Board may make resulting from permanent partial disabilities to certain body parts. An SLU award is compensation for "the residual permanent physical and functional impairments" of an extremity, not for the particular injury itself (Workers' Compensation Guidelines for Determining Impairment § 1.5, at 8 [2018]; see Matter of Genduso v New York City Dept. of Educ., 164 AD3d 1509, 1510 [2018]). "Although . . . a claimant may receive more than one SLU award for a loss of use of more than one member or parts of members, such SLU awards are nonetheless limited to only those statutorily-enumerated members listed in Workers' Compensation Law § 15 (3)" (Matter of Johnson v City of New York, 180 AD3d 1134, 1136 [2020] [internal quotation marks, brackets and citations omitted]). Neither Workers' Compensation Law § 15 (3) nor the Board's guidelines for determining impairments set forth separate SLU awards for, as is relevant here, the elbow or shoulder. Such impairments to separate parts of a member are encompassed in an overall SLU award for that specified member (see Workers' Compensation Law § 15 [3] [a]; Workers' Compensation Guidelines for Determining Impairment § 1.5, at 8 [2018]).

Here, the independent medical examiner evaluated the impairment to claimant's shoulder and opined that the shoulder injury resulted in a 45% SLU of claimant's right arm. Because

claimant previously received a 25% SLU award for his right arm with regard to an elbow injury, it was proper for the Board to deduct that SLU award from the 45% SLU award related to his shoulder injury (see Matter of Johnson v City of New York, 180 AD3d at 1136-1137; Matter of Genduso v New York City Dept. of Educ., 164 AD3d at 1510). As such, the 20% SLU award will not be disturbed. Claimant's remaining contentions, to the extent that they are properly before this Court, are unpersuasive.

Egan Jr., J.P., Mulvey, Pritzker and Colangelo, JJ.,
concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court