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New Appellate Case Law in New York on Issue of SLU when there are Classified Injury Sites

The Appellate Division has issued a recent opinion that will alter how the Law Judges and Board Panel address permanency where the Claimant has injuries subject to both scheduled (scheduled loss of use) and nonscheduled (classification) permanency determinations from the same accident.

In *Taher* ([click here to view opinion](#)), the Appellate Division held that “contrary to the position taken by the Board, Claimant may ultimately receive an SLU award notwithstanding his nonscheduled classification for the injuries that he sustained.”

While the Appellate Division added that a Claimant may not receive both an SLU and nonscheduled award for impairments sustained in the same accident, the *Taher* decision will end the previously established practice of not providing SLU awards where there were classifications related to nonscheduled injury sites when the Claimant has returned to work with no loss of wage earning capacity as a result of the incident.

With the holding in *Taher*, Claimants will pursue SLU awards regardless of whether they have nonscheduled injury sites and no loss of wage earning capacity. For example, in the past if there was permanent impairment to the neck or back and a scheduled site such as the shoulder or leg, and the Claimant returned to work with no loss of wage earning capacity, there would be no SLU for the shoulder or leg. This led to many SLU awards including language that there was no permanent impairment to the nonscheduled site. Now, however, a Claimant can seek the SLU award where there are findings of permanent impairment for nonscheduled sites and there is no loss of wage earning capacity.

The holding is contrary to established practice and Board Panel Decisions on the issue. The Board held a session for Judges on application of the new case law but there will probably be trial and error as the *Taher* decision is implemented by the Law Judges.

The Dickie, McCamey & Chilcote Workers' Compensation Group can provide a complete analysis on a case-by-case basis should this new case law in New York apply to a pending claim at the time of permanency classification. Please feel free to contact us.



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