

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 19, 2012

511809

In the Matter of the Claim of
HAMIDOU RAMADHAN,
Appellant,

v

MORGANS HOTEL GROUP
MANAGEMENT, LLC, et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

REVERSED the Board's ruling that 100%
SLU for both eyes was not a total disability,
stating Board's decision was inconsistent
with Board's prior rulings on this issue.

MEMORANDUM AND ORDER

Calendar Date: November 14, 2011

Before: Mercure, Acting P.J., Rose, Lahtinen, Kavanagh and
McCarthy, JJ.

Pasternack, Tilker, Ziegler, Walsh, Stanton & Romano,
L.L.P., New York City (Michael K. Gruber of counsel), for
appellant.

Gregory J. Allen, State Insurance Fund, New York City
(Vickie R. Cassidy of counsel), for Morgans Hotel Group
Management, LLC and another, respondents.

Rose, J.

Appeal from a decision of the Workers' Compensation Board,
filed May 11, 2010, which ruled, among other things, that
claimant has not sustained a permanent total disability pursuant
to Workers' Compensation Law § 15 (1).

Claimant suffered a compensable work-related injury to his

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eyes when he was splashed in the face with grease while cleaning a hotel kitchen, and he was awarded a 100% schedule loss of use of both eyes. Claimant applied for review, arguing that he was entitled to a mandatory finding of permanent total disability pursuant to Workers' Compensation Law § 15 (1). On review, the Workers' Compensation Board rejected claimant's contention and upheld the schedule loss of use award. Claimant now appeals.

The Board concluded that claimant did not qualify for total disability pursuant to Workers' Compensation Law § 15 (1) because, even though he qualified for a 100% schedule loss of use of both eyes (see Workers' Compensation Law § 15 [3] [p]), he still had some vision. Claimant, on the other hand, argues that he sustained the "loss of both eyes" as required for total disability, and he relies on a previous Board decision in which the claimant was determined to have a permanent total disability despite medical evidence indicating that the claimant still had some vision (see Max W. Fritzs 1993 WL 360607 [WCB No. 9881 0026, Aug. 31, 1993]). We agree that the previous Board decision finds a total disability on facts that appear to be substantially similar to those in this case (see also Matter of Boyce v Michelangelo Gen. Contrs., 195 AD2d 768, 769 [1993]), and the Board was required to either follow the relevant precedent established by its prior decision or provide an explanation for its failure to do so (see Matter of Charles A. Field Delivery Serv. [Roberts], 66 NY2d 516, 520 [1985]; Matter of Wills v Christian Nursing Registry, 280 AD2d 810, 811-812 [2001]; Matter of Waters v City of New York, 256 AD2d 680, 682 [1998]). Accordingly, we remit for the Board to adhere to its prior decision in Fritzs or provide an appropriate explanation for deviating from that precedent (see Matter of Rogers v Del Labs, 52 AD3d 1129, 1130 [2008]).

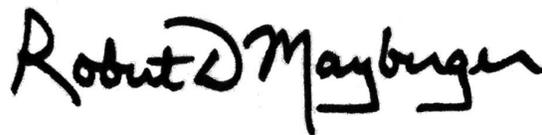
Mercure, Acting P.J., Lahtinen, Kavanagh and McCarthy, JJ.,
concur.

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ORDERED that the decision is reversed, without costs, and matter remitted to the Workers' Compensation Board for further proceedings not inconsistent with this Court's decision.

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