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Supreme Court, Appellate Division, Third Department, New York.

In the Matter of the Claim of LAURENCE KING, Appellant—Respondent,  
v.  
RICCELLI ENTERPRISES et al., Respondents—Appellants.  
and  
WORKERS' COMPENSATION BOARD, Respondent.

Decided December 14, 2017

**Facts:** Cross appeal from a decision of the Workers' Compensation Board, filed August 19, 2016, which ruled, among other things, that claimant sustained a permanent partial disability and a 50% loss of wage-earning capacity. Claimant was voluntarily laid off from his job and the was found to have voluntarily withdrawn from the labor market. Thereafter, the it was concluded that claimant had reattached to the labor market and had a permanent partial disability and a loss of wage-earning capacity of 81%. The Board disagreed with the Law Judge's finding that claimant had demonstrated his reattachment to the labor market, and rescinded awards. In addition, the Board found that claimant's loss of wage-earning capacity was 50%. Claimant appeals and the employer and its workers' compensation carrier cross-appeal from this decision.

**Holding:** Modified

**Discussion:** Whether a claimant has demonstrated an attachment to the labor market is a factual issue for the Board. Here, the record reveals that claimant contacted the ACCES-VR and the Office of Workforce Development to inquire about job assistance services and visited these agencies periodically, during which time he met with counselors, obtained job search advice, signed up for a workshop, had his resume prepared and searched for jobs online. The Workforce Development counselor advised claimant that he needed to obtain his high school equivalency diploma and the ACCES-VR counselor helped him devise an individualized plan for employment identifying his work goal as obtaining a job as a customer service

representative by December 31, 2015. In January 2015, claimant began receiving Social Security disability benefits. He testified that he did not pursue the work goal of becoming a customer service representative because he did not have sufficient education and admitted that he had not done anything with his resume or identified any potential job leads through his online search.

The Court found that although the claimant initially explored other possible employment his efforts waned thereafter, particularly once he began receiving Social Security disability benefits. Therefore, substantial evidence supports the conclusion that he did not demonstrate reattachment to the labor market.

With respect to claimant's loss of wage-earning capacity, there was no medical testimony presented at the hearings regarding claimant's medical impairment or functional ability/loss attributable to his injuries. In the absence of competent medical evidence concerning the medical inputs that must be considered in determining a claimant's loss of wage-earning capacity, substantial evidence does not support the Board's finding that claimant had a 50% loss of wage-earning capacity.

Stewart, Greenblatt, Manning & Paetz