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OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

Matter of JOHN BARRETT, Respondent

v

New York City DEPARTMENT OF TRANSPORTATION, Appellant

and

WORKERS' COMPENSATION BOARD

Decided February 9, 2017

- Facts: The claimant returned to work following a work-related accident and was classified as having a permanent partial disability with a 25% loss of wage earning capacity. The judge found that no awards were payable at that time because the claimant was working at full wages. The Employer appealed claiming that because the claimant was working at full wages, he had a 100% earning capacity and that a 25% loss of wage earning capacity was unlawful.
- Holding: Affirmed
- Discussion: The Court noted that loss of wage earning capacity is "used at the time of classification to set the maximum number of weeks" and that by contrast, wage earning capacity is used to determine the weekly rate of compensation. It affirmed that while wage earning capacity (the weekly rate) can change over time, loss of wage earning capacity is intended to remain fixed.