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Supreme Court, Appellate Division, Third Department, New York

Matter of ROBERTO PEREZ, Claimant-Appellant  
v  
BRONX LEBANON HOSPITAL CENTER, Respondents,  
and  
WORKERS' COMPENSATION BOARD, Respondent

Decided June 1, 2017

- Facts: This case was established for an injury to the back in 2012 and the claimant returned to work in 2013. The Workers' Compensation Law Judge found the claimant to have a permanent partial disability with a 10% loss of wage earning capacity, which was affirmed by the Board Panel. The claimant appealed.
- Holding: *Affirmed.*
- Discussion: The loss of wage earning capacity is used at the time of classification to set the maximum number of weeks over which a claimant with a permanent partial disability is entitled to receive benefits, while the wage earning capacity is used to determine a claimant's weekly rate of compensation. Therefore, despite the fact that the claimant was working at full wages, the Board was entitled to establish a loss of wage earning capacity, which sets a fixed durational limit on potential benefits.