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Supreme Court, Appellate Division, Third Department, New York

Matter of KEVIN DRAKE, Appellant

v

SRC, Inc., Respondent

and

WORKERS' COMPENSATION BOARD

Decided March 16, 2017

Facts: The claimant had an established injury and was found to have a 15% loss of wage earning capacity. The Board affirmed and the claimant appealed.

Holding: *Affirmed*

Discussion: The claimant argued that because the Board failed to define the weight it gave to the vocational factors that the claimant should be found to have a 32% loss of wage earning capacity, based on his actual post injury earnings. The Court disagreed and found that to do so would disregard the statutory distinction between loss of wage earning capacity and wage earning capacity. Where the claimant has post injury earnings, this determines his wage-earning capacity (the compensation rate) whereas his loss of wage capacity (the cap) is based on physical, functional, and vocational factors (including the claimant's current employment, if any). In addition, there is no requirement for the Board to make specific findings about percentage of medical impairment and how the vocational factors affect his ability to obtain employment.

Because the Board's determination was based on substantial evidence, it will not be disturbed.