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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Matter of Geraldine Wolfe, Claimant

v.

Ames Dept. Store Inc., Appellant

Workers' Compensation Board, Respondent

Decided March 29, 2018

- Facts: Claimant had a 2002 injury and was classified with a permanent total disability in 2014. Labor market attachment was found not to apply. On review, the Board held the issue of classification in abeyance and referred the claimant to an impartial specialist, who opined that the claimant had a temporary marked disability. The Board then found a marked temporary partial disability and that the claimant was not attached to the labor market. Claimant appeals.
- Holding: Affirmed.
- Discussion: The Board's adoption of the impartial specialist's opinion was supported by substantial evidence. The specialist declined to comment regarding a severity ranking under the Guidelines, pending production of an up to date MRI of the cervical spine. The claimant also drove nearly two hours to the exam, which was not indicative of a permanent total disability. The Court noted that "correlative imaging findings" were an appropriate consideration under the Guidelines. The Court also found substantial evidence to support the determination that the claimant was not attached to the labor market, where the claimant's search efforts ceased in August 2013 and the claimant did not avail herself of any educational or retraining programs.