

**STEWART, GREENBLATT, MANNING & BAEZ**  
**ATTORNEYS AT LAW**

DAVID J. GOLDSMITH  
PETER M. DeCURTIS  
LISA LEVINE  
ANDREA L. De SALVIO  
KRISTY L. BEHR  
RAYMOND J. SULLIVAN  
LUKE R. TARANTINO  
NICOLE A. SUISSA  
JONATHAN R. BAEZ  
DIANE P. WHITFIELD

ROBERT W. MANNING  
MADGE E. GREENBLATT  
RETIRED

6800 JERICHO TURNPIKE  
SUITE 100W  
SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1976-2021)  
KAFI WILFORD (2003-2010)  
MICHAEL H. RUINA (1992-2016)

RICARDO A. BAEZ  
MARIA E. CRETA  
JAMES MURPHY  
MONICA O'BRIEN  
NABISUBI MUSOKE  
SACHEE N. ARROYO  
OF COUNSEL

State of New York Supreme Court, Appellate Division  
Third Judicial Department  
In the Matter of the Claim of

LINDA EPSTEIN, Respondent,

v.

WALDBAUMS et. al., Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

May 1, 2025

Facts: The claimant herein was classified permanently partially disabled with an 81% loss of wage-earning capacity as the result of a 2011 injury. This equates to an award not to exceed 450 weeks of benefits. Prior to the exhaustion of her classification award, the claimant applied for an extreme hardship redetermination pursuant to Workers' Compensation Law Section 35 (3). While a Law Judge held that the claimant had failed to demonstrate how her impending loss of biweekly benefits would create an extreme hardship, the Board Panel reversed upon appeal.

Holding: *Affirmed.*

Discussion: Pursuant to Workers' Compensation Law Section 35 (3) a claimant classified with a 75% or greater loss of wage-earning capacity may request that his or her permanent partial disability be reclassified to a permanent total disability by making an application within the year preceding the exhaustion of his or her classification award. In determining whether the loss of biweekly benefits would create undue hardship, the Board considers factors including a claimant's assets, monthly expenses and household income. Here, it was ascertained that without the biweekly benefits the claimant would have less than \$200.00 to cover her basic needs after paying rent and other monthly expenses. Even though the claimant's monthly expenses were not found to be unusual for someone on a fixed income, and considering the claimant's advanced age of 75 years, limited education and poor health, it was unlikely that she could find gainful employment and therefore not an unreasonable determination that the loss of biweekly benefits would constitute an undue hardship. Since this is a factual determination that rests upon substantial evidence, the Board's opinion will not be disturbed.