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Supreme Court, Appellate Division, Third Department, New York
Matter of MELODY WOHLFEIL, Appellant

v.

SHAREL VENTURES, LLC, Respondents,

and

WORKERS' COMPENSATION BOARD

Decided November 16, 2017

Facts: Claimant appealed a finding of the WCB of a 75% loss of wage earnings capacity. Claimant had undergone 2 separate 2 level fusion surgeries. Claimant's medical evidence showed a 5F permanent impairment and less than sedentary work ability. Carrier has 4G opinion with IME testifying that claimant could not return to any meaningful work. The Law Judge and Board Panel both found 75% LWEC and ability to perform sedentary work. This appeal by the claimant ensued.

Holding: *Reversed.*

Discussion: Court found Board's decision regarding claimant's work capacity was inconsistent with credible medical testimony. Court found a permanent total disability. Decision was 3-2 with dissenting opinion arguing that review should be limited to standard of substantial evidence and therefore, there is no basis to reverse Board's decision.