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Supreme Court, Appellate Division, Third Department, New York

In the Matter of DIEULA SAINTVAL, Appellant
v.
AMN HEALTHCARE., et al., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent.

Decided October 11, 2018

- Facts: The claimant sustained injuries to the neck, back, right shoulder, right wrist and left knee as a result of a slip and fall. The claimant was found to have a Class 3, B impairment to the cervical spine, Class 3, B impairment to the lumbar spine, a sedentary work capacity and was awarded a 66% loss of earning capacity by the WCLJ. The carrier appealed and the Board Panel found a 45% loss of earning capacity.
- Holding: *Affirmed.*
- Discussion: A loss of wage earning capacity determination is based upon medical impairment, functional ability/loss and non-medical vocational factors. The WCLJ and Board Panel expressly credited the opinion of carrier's consultant, Dr. Gorski on the issue of medical impairment and functional capabilities. The Board Panel considered the claimant is of a young age and possess a collegiate certification but would not be able to return to the same employment. The Board also properly identified other transferable skills and was able to read, speak and write in English. The claimant also had five years of experience as a secretary. The Court found substantial evidence to support the finding of a 45% loss of earning capacity.