

STEWART, GREENBLATT, MANNING & BAEZ

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of LONDA TORRES, Appellant
v.
ST. LUKE'S ROOSEVELT HOSPITAL, et al., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent.

Decided October 11, 2018

Facts: The claimant had an established claim for bilateral carpal and cubital tunnel syndromes which was later amended to include the neck and consequential right hand RSD. In 2013, the claimant was classified with a permanent partial disability and 57.5% loss of wage earning capacity. In 2015, the claimant alleged a worsening of condition and deposition testimony was taken from three medical witnesses. The WCLJ determined that there was insufficient evidence of a change in condition. The Board Panel affirmed and the claimant's request for Full Board Review was denied.

Holding: *Affirmed.*

Discussion: The Board is authorized to reclassify a disability upon proof that there has been a change in condition. To establish a permanent total disability a claimant must demonstrate that he or she is totally disabled and unable to engage in any gainful employment. The Court noted that although the claimant's treating physicians testified to a worsening of her symptoms, their testimony did not arise to the finding of a permanent total disability. The Court also referred to the carrier's consultant's testimony that the claimant's condition was not any different than in 2013. The Court found substantial evidence to affirm the Board Panel's determination.

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