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Supreme Court, Appellate Division, Third Department, New York

Matter of MELODY WOHLFEIL, Claimant-Respondent
v
SHAREL VENTURES, LLC, Respondents,
and
WORKERS' COMPENSATION BOARD, Appellant

Decided September 6, 2018

Facts: The Workers' Compensation Board had found the claimant to have a 75% loss of wage earning capacity, and on appeal the Third Department Appellate Division had found the Board erred in not finding a permanent total disability. The Court had found that the loss of wage earning capacity was not supported by substantial evidence in the record, as both doctors found the claimant could not return to gainful employment. The Court had found that the standard is "gainful employment," and not an undefined type of limited sedentary work.

Holding: *Reversed.*

Discussion: The Workers' Compensation Board's Determination that the claimant had a permanent partial disability with a 75% loss of wage earning capacity was supported by substantial evidence.