

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

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
JILLIAN A. SMITH
JONATHAN SO

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

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

Supreme Court, Appellate Division, Third Department, New York

Matter of LEONID GOLOVASHCHENKO, Appellant,

v.

ASAR INTERNATIONAL CORP. et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

Decided September 14, 2017

Facts: Claimant, a 58-year-old male with limited English, moved to the US in 1997. He was an asbestos handler, who while working on a roof, was struck by a piece of plywood, fell off and lost consciousness. The claim was established for the left arm, left hand, left hip, back, face, head, neck, right leg, left thigh, right hand and major depression. Following medical reports and testimony, the WCLJ classified claimant as having a nonscheduled permanent partial disability. In addition, the WCLJ found that he could perform light work and assessed his loss of wage-earning capacity at 60%. A Board panel upheld it and claimant appealed.

Holding: *Modified.*

Disposition: To determine the loss of wage-earning capacity for a claimant with a nonscheduled permanent partial disability the 2012 New York State Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity are utilized. There are two types of input considered by the Board when determining loss of wage earning capacity, medical and vocational factors. Medical input is broken down into two further categories, medical impairment and functional ability/loss, which are evaluated by a physician. Vocational factors deal with claimant's education, skill, age and literacy. Here, it was noted that no physician rated claimant as having the functional ability to perform light work. In addition, it was noted that "[t]he WCLJ, who was not a medical doctor, appear[ed] to have undertaken his own independent analysis of the medical evidence in concluding that claimant was capable of performing light work" and found that a 60% loss of

wage-earning capacity was not supported by substantial evidence. Therefore, the Court remitted this for further proceedings to ascertain claimant's loss of wage-earning capacity in accordance with the 2012 Guidelines and stated that a WCLJ is not required by the 2012 Guidelines to make a preliminary finding with respect to the degree of permanent medical impairment before further developing the record to consider non-medical vocational factors.

Stewart, Greenblatt, Manning & Báez