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## MY EMPLOYER SENT ME A LIST OF JOBS WHILE I'M RECEIVING WORKERS' COMPENSATION BENEFITS, NOW WHAT?

### LEGAL PERSPECTIVES

By Daniel E. McCabe, Esq., Wolf, Baldwin & Associates, PC.



As an attorney who represents clients who are receiving workers' compensation benefits, I often get the above question. In Pennsylvania, when someone is receiving workers' compensation benefits, an employer may perform what is called an earning power assessment pursuant to Section 306(b)(2) of the *Workers' Compensation Act*. Put simply, this is a way for an employer to challenge whether an injured worker has some type of residual earning power. So, the question that the injured worker has to ask himself is no longer "can I still do the job I was doing when I was injured," but rather, "can I perform any job whatsoever, and how much can I earn?" Answering the first of those two questions is often simple, the second question can be quite complicated.

For instance, an injured worker may have had a very physical job such as a laborer. When an injured worker suffers a back injury to the point where multiple surgeries are required, it is usually rather simple to determine whether that person can perform a job that requires him to lift very heavy objects. However, is not such a simple question to answer whether that person can possibly perform a job which requires nearly no lifting. That is the very question that an earning power assessment attempts to answer. The idea is that the employer must prove that an injured worker can perform some type of work at some modified level.

There are some basics that we must cover to understand how this process works. First, the employer must obtain some type of change in the injured worker's status. In other words, if an injured worker is considered fully disabled by workers compensation standards, that person must be released to some type of modified duty, whether it be sedentary, light, or even medium duty work.

*(Continued on page 36)*

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