

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, THIRD DEPARTMENT**

Matter of Dimaggio v. Mayrch Excavation Found.

2020 NY Slip Op 07636 (App. Div. 2020) · No. 529226 · Decided December 17, 2020

SUMMARY

The New York Appellate Division, Third Department, held that a claimant's oral exception to a Workers' Compensation Law Judge's findings was sufficiently specific under 12 NYCRR 300.13 (b) (4) (v). The court reversed the Workers' Compensation Board's denial of review and remitted the matter for further proceedings.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Colangelo, J.; Garry, P.J.; Egan Jr., J.; Mulvey, J.
JURISDICTION	New York
DECIDED	December 17, 2020
DOCKET	529226
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed a Workers' Compensation Board decision denying review of a Workers' Compensation Law Judge's decision classifying him as having a permanent partial disability and finding a 96% loss of wage-earning capacity.
STANDARD OF REVIEW	Whether the Board abused its discretion in denying the application for review for failure to interpose a sufficiently specific objection or exception under 12 NYCRR 300.13 (b) (4) (v).
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Ottavio Dimaggio v. Mayrch Excavation Foundation, Workers' Compensation Board

TOPICS

workers compensation

administrative law

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the claimant's counsel sufficiently stated a specific objection or exception to the WCLJ's oral findings to satisfy 12 NYCRR 300.13 (b) (4) (v).
2. Whether the Workers' Compensation Board abused its discretion by denying the claimant's application for review.

HOLDINGS

1. No formulaic objection is required following a WCLJ's issuance of oral findings.
2. Viewed in context, the claimant's exception was sufficiently specific to satisfy 12 NYCRR 300.13 (b) (4) (v).
3. The Board abused its discretion in denying the claimant's application for review.

KEY QUOTATIONS

*“No formulaic objection is required following a WCLJ's issuance of oral findings” (*2)*

*“under these circumstances, we find that the basis of claimant's exception, viewed in context, was sufficiently specific” (*2)*

FACTUAL BACKGROUND

Ottavio Dimaggio, an Italian-speaking carpenter, had an established workers' compensation claim arising from a 2014 back injury. After a January 18, 2018 hearing concerning loss of wage-earning capacity, the WCLJ classified him as having a permanent partial disability and initially stated that he had a 95% loss of wage-earning capacity, later correcting the figure to 96%. Counsel immediately stated and repeated that she was noting an exception, while Dimaggio expressed disagreement and confusion about why he was not classified as 100% disabled.

PROCEDURAL HISTORY

Claimant sought review by the Workers' Compensation Board of the WCLJ's oral and written findings concerning his classification and loss of wage-earning capacity, arguing that he was totally disabled. The Board denied review under 12 NYCRR 300.13 (b) (4) (v), concluding that counsel's general exception was not sufficiently specific. The Appellate Division reversed and remitted the matter to the Board for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remitted to the Workers' Compensation Board for further proceedings not inconsistent with the Appellate Division's decision.

CASES CITED

- Matter of Bruscino v Verizon, 178 AD3d 1272, 1272-1273 (2019)
- Matter of Markolovic v MTA Bus Eastchester Depot, 174 AD3d 1271, 1272 (2019)
- Matter of Sweeney v Air Stream A.C. Co., 167 AD3d 1222, 1222-1223 (2018), lv denied 33 NY3d 903 (2019)

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