

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

Matter of the Claim of David Sylvester v. Department of Corrections and Community Supervision et al.

2025 NY Slip Op 07064 · No. CV-24-2093 · Decided December 18, 2025

SUMMARY

The Appellate Division, Third Department, affirmed the Workers' Compensation Board's denial of David Sylvester's application for reconsideration and/or full Board review. The court held that Sylvester had not demonstrated newly discovered evidence, a material change in condition, or the Board's failure to consider the relevant issues, and therefore the Board's denial was neither arbitrary and capricious nor an abuse of discretion.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Fisher, J.; Pritzker, J.P.; McShan, J.; Powers, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 18, 2025
DOCKET	CV-24-2093
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Workers' Compensation Board decision denying claimant's application for reconsideration and/or full Board review.
STANDARD OF REVIEW	The denial of an application for reconsideration and/or full Board review is reviewed to determine whether it was arbitrary and capricious or otherwise constituted an abuse of discretion.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	David Sylvester v. Department of Corrections and Community Supervision, et al.

TOPICS

workers compensation

appellate procedure

standard of review

judicial review of agency action

employment law

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board abused its discretion or acted arbitrarily and capriciously in denying claimant's application for reconsideration and/or full Board review.
2. Whether the merits of the Board's prior decision concerning the 40% schedule loss of use and the carrier's credit were properly before the Appellate Division when claimant appealed only from the denial of reconsideration and/or full Board review.

HOLDINGS

1. When a claimant appeals only from the Workers' Compensation Board's denial of reconsideration and/or full Board review, the merits of the Board's underlying decision are not properly before the Appellate Division.
2. An applicant seeking reconsideration and/or full Workers' Compensation Board review must demonstrate newly discovered evidence, a material change in condition, or that the Board improperly failed to consider issues raised in the application for review.
3. The Workers' Compensation Board did not abuse its discretion or act arbitrarily and capriciously in denying claimant's application for reconsideration and/or full Board review.

KEY QUOTATIONS

*“As such, our review is limited to whether the Board's denial of the application was arbitrary and capricious or otherwise constituted an abuse of discretion” (*1-*2)*

*“To succeed on an application for reconsideration and/or full Board review, the applicant must demonstrate that newly discovered evidence exists, that there has been a material change in condition, or that the Board improperly failed to consider the issues raised in the application for review in making its initial determination” (*2)*

FACTUAL BACKGROUND

Claimant suffered a work-related left-shoulder injury in 2017 and was awarded a 10% schedule loss of use of the left arm. After suffering additional work-related injuries in June 2021, claimant underwent left-shoulder surgery, and his treating orthopedic surgeon assessed a 60% schedule loss of use based on range-of-motion deficits. The Workers' Compensation Law Judge determined under the 2018 Workers' Compensation Guidelines that the deficits equated to a 40% schedule loss of use; the Board also awarded the carrier a credit for the prior 10% award. Claimant sought reconsideration and/or full Board review but did not demonstrate newly discovered evidence or a material change in condition.

PROCEDURAL HISTORY

Claimant sustained work-related injuries in 2017 and 2021 and received a 10% schedule loss of use award for the left arm from the 2017 injury. After a hearing concerning the 2021 injuries, the Workers' Compensation Law Judge determined that claimant sustained a 40% schedule loss of use of the left arm but did not address the carrier's request for a credit for the prior award. The Workers' Compensation Board later determined that claimant sustained a 40% schedule loss of use and that the carrier was entitled to the credit. Claimant did not appeal that decision, instead seeking reconsideration and/or full Board review; the Board denied that application, and claimant appealed to the Appellate Division.

DISPOSITION

affirmed

CASES CITED

- Matter of Genduso v New York City Dept. of Educ., 164 AD3d 1509, 1510 (3d Dept 2018)
- Matter of Persaud v Ash & Peterkin Cent. Lock Co., Inc., 227 AD3d 1336, 1337 (3d Dept 2024), lv dismissed 42 NY3d 1033 (2024)
- Matter of Rios v Rockaway Contr. Corp., 213 AD3d 1061, 1062 (3d Dept 2023)
- Matter of Mascali v Town/Vil. of Harrison, 203 AD3d 1424, 1425 (3d Dept 2022)
- Matter of Lopez v Platoon Constr., Inc., 212 AD3d 953, 954 (3d Dept 2023)
- Matter of Singletary v Schiavone Constr. Co., 174 AD3d 1240, 1242 (3d Dept 2019)
- Matter of Oparaji v Books & Rattles, 168 AD3d 1209, 1209 (3d Dept 2019)
- Matter of Petre v Allied Devices Corp., 213 AD3d 1117, 1118 (3d Dept 2023)
- Matter of Banish v Warren County Sheriff's Off., 209 AD3d 1081, 1084 (3d Dept 2022)

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