

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

Matter of Abdiyev v. Eagle Container Corp.

2020 NY Slip Op 01879 (App. Div. 2020) · No. 529236 · Decided March 16, 2020

SUMMARY

The New York Appellate Division, Third Department, affirmed a Workers' Compensation Board decision denying review of a Workers' Compensation Law Judge's decision disallowing the claimant's injury claim. The court held that the Board's regulation requiring a specific objection or exception to be raised before the Workers' Compensation Law Judge was not inconsistent with Workers' Compensation Law § 23, and that the Board did not abuse its discretion in denying review because no objection or exception was made at the hearing.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Clark, J.; Egan Jr., J.P.; Aarons, J.; Pritzker, J.; Reynolds Fitzgerald, J.
JURISDICTION	New York
DECIDED	March 16, 2020
DOCKET	529236
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed from a Workers' Compensation Board decision that denied administrative review of a Workers' Compensation Law Judge's decision disallowing his claim because he failed to interpose a specific objection or exception on the record at the hearing.
STANDARD OF REVIEW	Whether the Workers' Compensation Board abused its discretion in declining to review the WCLJ's decision because claimant failed to interpose a specific objection or exception at the hearing.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	David Abdiyev v. Eagle Container Corp., et al., Workers' Compensation Board

TOPICS

workers compensation

administrative law

preservation of error

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether 12 NYCRR 300.13 (b) (4) (v), which permits the Workers' Compensation Board to deny review when an appellant failed to interpose a specific objection or exception to a WCLJ ruling, is inconsistent with Workers' Compensation Law § 23.
2. Whether the Workers' Compensation Board abused its discretion by denying administrative review because claimant failed to raise a specific objection or exception at the hearing.

HOLDINGS

1. The regulation is not inconsistent with Workers' Compensation Law § 23 because section 23's provision that exceptions to Board rulings need not be filed concerns appeals from Board decisions to the Appellate Division and Court of Appeals, not applications to the Board for review of a WCLJ decision.
2. The Workers' Compensation Board did not abuse its discretion by declining to review the WCLJ's decision because claimant failed to interpose a specific objection or exception at the hearing as required by the regulation.

KEY QUOTATIONS

“'[T]he Board 'may adopt reasonable rules consistent with and supplemental to the provisions of [the Workers' Compensation Law],’ and the Chair of the Board 'may make reasonable regulations consistent with the provisions of [the Workers' Compensation Law]’” (2020 NY Slip Op 01879)

“‘It shall not be necessary to file exceptions to the rulings of the [B]oard’” (2020 NY Slip Op 01879)

FACTUAL BACKGROUND

Abdiyev applied for workers' compensation benefits in November 2017, alleging that a work-related accident injured both shoulders, his left elbow and hand, both knees, his left hip, neck, head, and back. At a June 6, 2018 hearing, the Workers' Compensation Law Judge disallowed the claim, finding Abdiyev's testimony about the alleged accident not credible and the medical evidence insufficient. Abdiyev's attorney did not object to or except to the WCLJ's ruling on the record.

PROCEDURAL HISTORY

Abdiyev applied for workers' compensation benefits based on alleged work-related injuries. A Workers' Compensation Law Judge disallowed the claim after finding his testimony concerning the accident not credible and the medical evidence insufficient. The Workers' Compensation Board denied his application for administrative review under 12 NYCRR 300.13 (b) (4) (v), and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Johnson v All Town Cent. Transp. Corp., 165 AD3d 1574, 1574 (2018)
- Matter of Perry v Main Bros Oil Co., 174 AD3d 1257, 1258 (2019)
- Matter of Bruscino v Verizon, N.Y., 178 AD3d 1272, 1273 (2019)
- Matter of Markolovic v MTA Bus Eastchester Depot, 174 AD3d 1271, 1273 (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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