

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677
FAX 516-433-4342

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

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

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT (RET.)
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
JONATHAN SO

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of OTTAVIO DIMAGGIO, Appellant,
v.
MAYRACH EXCAVATION FOUNDATION, Respondents,
WORKERS' COMPENSATION BOARD, Respondent.

December 17, 2020

Facts: The Law Judge originally indicated that the Claimant was being classified with a 95% loss of wage-earning capacity. Claimant is Italian speaking and at the hearing where the findings were implemented, through the aid of an interpreter, he expressed confusion as to why he was not awarded a total disability. His attorney also noted her exception to these findings on the record. The Law Judge then clarified that the claimant was being found to have a 96% loss of wage-earning capacity and the claimant's attorney noted an objection to that finding. Claimant's subsequent appeal to the decision memorializing these findings was denied for failure to comply with 12 NYCRR 300.13 (b) (4) (v) reasoning that the claimant's general exception was not specific enough, as it was necessary to make some reference to those findings.

Holding: Reversed.

Discussion: There is no specific formulaic objection required when disagreeing with an oral ruling. Here, in context, the claimant's objection was sufficiently specific to satisfy the requirements of the regulation. Accordingly, the Board's denial of the Application for Board Review was therefore an abuse of discretion and this case is remitted for further development of the record.