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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of GIOVANNY VARGAS, Appellant,  
v.  
HAMPTON INN 35<sup>TH</sup> STREET, Respondents,  
WORKERS' COMPENSATION BOARD, Respondent.

December 17, 2020

**Facts:** This is an established claim for injuries to the neck, left shoulder, left elbow and left wrist. After litigation arose on the issue of tentative rates, the Law Judge found at a hearing that the claimant was entitled to awards for the period in question at a partial rate. No exception was noted at the hearing. The claimant then filed an Application for Board Review and the Decision was affirmed. The claimant then filed an Application for Reconsideration and/or Full Board Review which was denied.

**Holding:** Affirmed.

**Discussion:** The claimant only appealed to the Court regarding the denial of his Application for Reconsideration and/or Full Board Review so the issue of his underlying appeal to have awards for the period in question made at the total rate is not before the Court. The denial of the Application for Reconsideration and/or Full Board Review was not arbitrary or capricious and the claimant did not present any new evidence, so the Board did not abuse its discretion.