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SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Matter of David Brian Brasher, Claimant

v.

Sam Dell's Dodge Corp., Appellant

Workers' Compensation Board, Respondent

Decided March 22, 2018

Facts: This self-represented claimant had a 1986 case and a 2002 case. The claimant was classified with a 75% permanent partial disability in 2015, but awards were suspended for lack of attachment. The Board Panel affirmed in January 2016 and Full Board review was denied in April 2016. The claimant appealed only from the denial of Full Board Review.

Holding: Affirmed.

Discussion: The claimant did not appeal from the January 2016 Board Panel Decision and the Court reviewed the limited question as to whether the April 2016 denial of Full Board review was arbitrary and capricious. The Court concluded that the Board did not act in an arbitrary or capricious manner considering the claimant's own physicians found he had a 75% permanent disability, which contradicted the claimant's argument that he was totally disabled, could not fill out applications, and should not have to be attached to the labor market.