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Supreme Court, Appellate Division, Third Department, New York

In the Matter of CHRISTIAN VASQUEZ, Claimant

v.

NORTH STAR CONSTRUCTION GROUP SERVICE, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

May 19, 2022

Facts: Claimant alleged injuries sustained in a slip and fall from a ladder. The claim was controverted and established following development of the record. The Workers' Compensation Board declined to consider additional materials tendered by the carrier on appeal.

Holding: *Affirmed.*

Discussion: The Court noted that this was an unwitnessed accident and that the claimant was transported from the scene by ambulance. Evidence was produced showing that the claimant had sustained an injury to the same part of the body the day before the accident and failed to disclose this prior injury to treating physicians and the independent medical examiner. The Court found that the Board as the sole arbiter of witness credibility was free to accept or disregard this information. The Court did state that "We have no quarrel with the proposition that a medical opinion is only as good as the accuracy of the foundation upon which it is based." But the Court indicated that the nature of the unwitnessed fall and the medical testimony that this mechanism was sufficient to cause the injury was supported by substantial evidence.