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Supreme Court, Appellate Division, Third Department, New York

In the Matter of Nestor SARMIENTO, Appellant,

v

EMPIRE CONTRACTING OF NY CORP. et al., Respondents

and

Workers' Compensation Board, Respondent

November 12, 2020

Facts: Claimant filed a claim for workers' compensation benefits contending that he sustained various work-related injuries after he fell approximately 15 to 20 feet from a scaffold. The claim was controverted, and a Workers' Compensation Law Judge "reluctantly" established it for injuries to claimant's left hip, left knee, back and neck. Upon administrative review, the Workers' Compensation Board reversed and disallowed the claim, finding that there was insufficient evidence to establish that claimant's injuries arose out of and in the course of his employment.

Holding: *Affirmed.*

Discussion: The Court afforded deference to the Board's credibility assessment and, as a result, found substantial evidence in the record to support the Board's determination that claimant's injuries did not arise out of and in the course of his employment.