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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of DANIEL GUAMANTARIO TENECELA, Appellant,

v.

VRAPO CONSTRUCTION et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent,

JOSEPH A. ROMANO, Appellant.

January 19, 2017

Facts: Claimant was working as a carpenter and fell off a roof. Injuries were established to his neck, back, knees, head, nose, right shoulder and right wrist. Claimant received ongoing treatment and was paid awards at a temporary total disability rate. A WCLJ concluded claimant had a permanent partial disability and a loss of wage-earning capacity at 98%. The WCLJ awarded \$4,000 in counsel fees. The Board upheld the determination for the claimant but sua sponte reduced the counsel fee award to \$450 due to deficiencies in the attorney's OC-400.1 form. The claimant and his attorney appeal.

Holding: *Affirmed.*

Discussion: The Court outlined the facts that supported the Board's decision. Claimant did not raise total industrial disability before the WCLJ or on appeal to the Board, therefore, the issue was unpreserved for review. In regards to the counsel fees, the Board properly found that the OC-400.1 form was deficient because the description of the services rendered was not legible. In addition, the attorney did not indicate the specific amount of time spent on each of the services rendered to claimant.