

*State of New York
Supreme Court, Appellate Division
Third Judicial Department*

Decided and Entered: June 2, 2016

521584

In the Matter of the Claim of
CHRISTOPHER HARTIGAN,
Respondent,

v

ALBANY COUNTY SHERIFF'S
DEPARTMENT et al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: April 29, 2016

Before: McCarthy, J.P., Egan Jr., Rose and Aarons, JJ.

Walsh & Hacker, Albany (Peter J. Walsh of counsel), for appellants.

The Law Firm of Alex Dell, Albany (Nicholas A. Fusco of counsel), for Christopher Hartigan, respondent.

Rose, J.

Appeal from a decision of the Workers' Compensation Board, filed December 3, 2014, which ruled that claimant sustained an accidental injury arising out of and in the course of his employment.

Claimant, a correction officer, filed a claim for workers' compensation benefits asserting that he suffered a work-related myocardial infarction on the morning of April 4, 2013. Following a hearing, a Workers' Compensation Law Judge found that claimant had sustained a work-related injury and awarded him benefits. The self-insured employer and its third-party administrator (hereinafter collectively referred to as the employer) filed an application for review and the Workers' Compensation Board upheld the decision of the Workers' Compensation Law Judge. The employer now appeals.

Initially, we need not consider the applicability of Workers' Compensation Law § 21 inasmuch as the Board's finding of causal relationship was not based upon the presumption contained therein but, instead, upon the medical evidence and testimony adduced at the underlying hearing (see Matter of Roberts v Waldbaum's, 98 AD3d 1211, 1211-1212 [2012]; Matter of Tompkins v Sunrise Heating Fuels, 271 AD2d 888, 888 [2000]). Turning to the merits, it was claimant's burden to establish by competent medical evidence that the myocardial infarction he sustained was causally related to his employment (see Matter of Venditti v D'Annunzio & Sons, 128 AD3d 1303, 1304 [2015]; Matter of Anderson v New York City Dept. of Design & Constr., 121 AD3d 1146, 1147 [2014]). Where medical proof is relied upon to demonstrate such a causal relationship, it must signify a probability of the underlying cause that is supported by a rational basis and not be based upon a general expression of possibility (see Matter of Lichten v New York City Tr. Auth., 132 AD3d 1219, 1219-1220 [2015]).

Here, claimant testified that, on the morning in question, after delivering two heavy food carts from the correctional facility's kitchen to certain cell tiers, he experienced chest pain, began to sweat profusely and had difficulty breathing. After claimant's second visit to his employer's medical department due to these symptoms, a colleague drove him to a hospital where he was later diagnosed as having sustained a

myocardial infarction at some time on that day. Although two cardiologists testified that claimant had multiple risk factors, including obesity, high blood pressure, hyperlipidemia, diabetes and a family history of heart disease, neither one offered an opinion as to whether claimant's specific activities at work that morning were a cause of his myocardial infarction. After conducting an independent medical examination of claimant, the employer's medical expert opined that claimant's myocardial infarction was not caused by work-related physical activity and, instead, was suffered hours later after he underwent a stress test at the hospital. This expert's opinion as to the timing of the infarction was based in part on a "bump" in cardiac enzymes shown in a blood test performed after the stress test.

To counter this opinion as to causal relationship, claimant relies on the testimony of his treating cardiologist. Due to his unfamiliarity with claimant's work activities on the morning in question, claimant's cardiologist initially declined to offer an opinion as to whether his myocardial infarction was causally related to his employment. In response to a hypothetical posing the type of physical activity that claimant had engaged in that morning, the cardiologist stated only that, based on claimant's risk factors, any stress or physical exertion could have caused the myocardial infarction. Later, when asked to clarify this opinion, he stated, "I don't know how was (sic) [claimant's] work situation or what happened that particular day, but stress . . . can be [an] aggravating factor in the presence of risk factors."

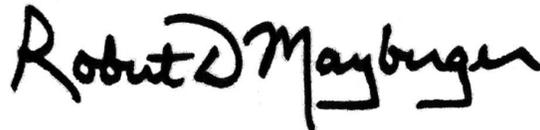
While the Board is entitled to resolve conflicting medical opinions, there must be "medical opinion evidence regarding the probability of a causal relationship supported by a rational basis; a general expression of possibility will not suffice" (Matter of Dizenzo v Henderson & Johnson, 114 AD3d 1014, 1014 [2014]; see Matter of Zehr v Jefferson Rehabilitation Ctr., 17 AD3d 811, 813 [2005]). Here, because the testimony of claimant's treating cardiologist expressed merely the possibility that the physical activities in which claimant engaged could have caused his myocardial infarction, such testimony falls short of the

required degree of medical proof. As a result, the Board's determination based upon that testimony lacked a rational basis and was not supported by substantial evidence (see Matter of Norton v North Syracuse Cent. School Dist., 59 AD3d 890, 891 [2009]; Matter of Zehr v Jefferson Rehabilitation Ctr., 17 AD3d at 813).

McCarthy, J.P., Egan Jr. and Aarons, JJ., concur.

ORDERED that the decision is reversed, without costs, and matter remitted to the Workers' Compensation Board for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court