

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

Decided and Entered: December 12, 2013

514342

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In the Matter of the Claim of  
ANDREW SCALO,  
Respondent,  
v

C.D. PERRY & SONS, INC.,  
et al.,  
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,  
Respondent.

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Calendar Date: November 21, 2013

Before: Peters, P.J., Lahtinen, Spain and Egan Jr., JJ.

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Michael Miliano, State Insurance Fund, Albany (Edward Obertubbesing of counsel), for appellants.

James Trauring & Associates, Schenectady (James A. Trauring of counsel), for Andrew Scalo, respondent.

Eric T. Schneiderman, Attorney General, New York City (Steven Segall of counsel), for Workers' Compensation Board, respondent.

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Lahtinen, J.

Appeal from a decision of the Workers' Compensation Board, filed September 17, 2012, which denied the request of the employer and its workers' compensation carrier for reconsideration and/or full Board review.

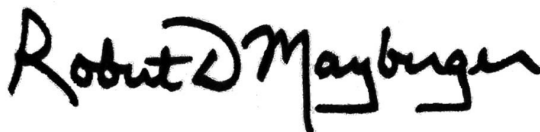
Claimant filed a claim for workers' compensation benefits based upon a back injury he sustained while working for the employer in July 2010. The employer controverted the claim asserting that claimant's injury was not the result of a work-related accident and that any such injury would be subject to apportionment. Following a hearing, a Workers' Compensation Law Judge found that claimant was disabled due to a work-related injury and awarded benefits without apportionment. On administrative appeal, the Workers' Compensation Board affirmed. The subsequent application by the employer and its workers' compensation carrier for reconsideration and/or full Board review was denied and this appeal ensued.

Applications for Board review are to be considered by a panel of at least three members and may not be decided by the chair, or any other single member of the Board, alone (see Workers' Compensation Law §§ 23, 142 [2]; Matter of Drummond v Desmond, 295 AD2d 711, 713 [2002], lv denied 98 NY2d 615 [2002]; Matter of Greene v Sproat, 18 AD2d 420, 421-422 [1963], lv denied 13 NY2d 596 [1963]). The record before us provides no indication that the application for reconsideration and/or full Board review was considered by a three-member panel. Rather, the decision appears to have been made solely by the chair "on behalf of the Board." Accordingly, this matter must be remitted to the Board for proper consideration of the application by a panel of the Board consisting of not less than three members.

Peters, P.J., Spain and Egan Jr., 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