

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

Decided and Entered: December 28, 2017

525173

In the Matter of the Claim of
YUJUAN SHENG,

Appellant,

v

MEMORANDUM AND ORDER

TIME WARNER CABLE, INC., et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: November 20, 2017

Before: McCarthy, J.P., Rose, Devine, Mulvey and Rumsey, JJ.

Yujuan Sheng, Briarwood, appellant pro se.

Foley, Smit, O'Boyle & Weisman, Hauppauge (Jennifer K. Cohen of counsel), for Time Warner Cable, Inc. and another, respondents.

Rose, J.

Appeal from a decision of the Workers' Compensation Board, filed September 23, 2016, which, among other things, found that claimant had no further compensable time after October 29, 2008.

Claimant was awarded workers' compensation benefits after she sustained work-related injuries to her back and left hip in 2005 (131 AD3d 1283, 1284 [2015], lv dismissed 26 NY3d 1060 [2015]). After her employment ended, she raised issues of permanency and reduced wages (id.). Eventually, in September 2013, the Workers' Compensation Board affirmed the determination

that claimant had no further compensable time after October 29, 2008 (id.). Claimant failed to appeal from the September 2013 decision, and her appeal to this Court from the denial of her request for reconsideration and/or full Board review was unsuccessful (id.). Claimant thereafter wrote a letter to the Board seeking a permanent partial disability award, and the matter was set for a hearing. Following the hearing, a Workers' Compensation Law Judge closed the matter after noting that this Court had previously rejected claimant's argument that the Board had erred in concluding that she had no further causally-related disability. On administrative review, the Board affirmed the WCLJ decision, and claimant now appeals.

We affirm. Claimant's application failed to include any contemporaneous medical records that would support the conclusion that there has been a material change in her condition (see 12 NYCRR 300.14 [a] [2]; Matter of Pucci v DCH Auto Group, 90 AD3d 1255, 1255-1256 [2011]). She also failed to set forth any new evidence not previously available to the Board at the time of the prior hearing. Therefore, the Board did not abuse its discretion by not revisiting its September 2013 decision (see 12 NYCRR 300.14 [a] [1]; Matter of Brennan v Village of Johnson City, 98 AD3d 1199, 1199-1200 [2012], lv dismissed 20 NY3d 998 [2013]; Matter of D'Errico v New York City Dept. of Corrections, 65 AD3d 795, 796 [2009], appeal dismissed 13 NY3d 899, 895 [2009]). To the extent that claimant again attempts to challenge the Board's September 2013 decision insofar as it found no further compensable lost time, that determination is not properly before us (see Matter of Sheng v Time Warner Cable, Inc., 131 AD3d at 1284). Given the foregoing, we find no reason to disturb the Board's determination.

McCarthy, J.P., Devine, Mulvey and Rumsey, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

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

Robert D. Mayberger
Clerk of the Court