

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

Decided and Entered: March 28, 2024

535458

In the Matter of the Claim of BOLOT
DJANUZAKOV,
Appellant,

v

MANHATTAN & BRONX SURFACE
TRANSIT OPERATING
AUTHORITY,
Respondent.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: June 7, 2023

Before: Lynch, J.P., Clark, Pritzker, Reynolds Fitzgerald and Fisher, JJ.

Schotter Millican, LLP, Brooklyn (*Geoffrey Schotter* of counsel), for appellant.

Weiss, Wexler & Wornow, PC, New York City (*J. Evan Perigoe* of counsel), for
Manhattan & Bronx Surface Transit Operating Authority, respondent.

Pritzker, J.

Appeal from a decision of the Workers' Compensation Board, filed April 27, 2022,
which ruled that claimant did not sustain a compensable injury and disallowed his claim
for workers' compensation benefits.

Claimant, a bus driver, left his employment in November 2020 and later filed a claim for workers' compensation benefits alleging that he sustained work-related stress and psychological injuries as a result of his exposure to COVID-19, the COVID-19-related death and illness of coworkers, the conditions of his employment and his treatment by coworkers and passengers, among other things. Claimant's treating clinical psychologist diagnosed him with causally-related major depressive disorder and anxiety disorder due to multiple stressful events that he reported had occurred in the course of his work since the start of the pandemic and found him to be temporarily totally disabled, ongoing through a March 2021 hearing. Following a further hearing at which claimant testified, the Workers' Compensation Law Judge disallowed the claim, finding that claimant had not experienced work-related stress greater than that shared by similar workers during the pandemic. Upon administrative review, the Workers' Compensation Board affirmed.¹ Claimant appeals.

Among the arguments advanced by claimant is the contention that, in cases involving exposure to COVID-19, the Board improperly applies a disparate burden to claimants seeking compensation for contraction of the virus as compared to those, like claimant here, seeking compensation for psychological injuries stemming from such exposure in the workplace. For the reasons stated in *Matter of Anderson v City of Yonkers* (___ AD3d ___ [3d Dept 2024] [decided herewith]), we agree. Suffice it to say, "if the Board creates a special rule allowing claimants alleging physical injuries from exposure to COVID-19 to meet their burden of showing that an injury arose in the course of employment, it must also apply such a rule to claimants alleging psychological injuries from exposure to COVID-19" (*id.* at ___). The matter must therefore be remitted to the Board to determine, consistent with the guidance set forth in *Matter of Anderson*, whether claimant demonstrated "either a specific exposure to COVID-19 or the prevalence of COVID-19 in [his] work environment so as to present an elevated risk of exposure constituting an extraordinary event" and, if so, whether a causal connection exists between the alleged injury and the workplace accident (*id.* at ___). Claimant's remaining contentions have either been rendered academic in light of our determination or have been reviewed and found to be lacking in merit.

Lynch, J.P., Clark, Reynolds Fitzgerald and Fisher, JJ., concur.

¹ The Board rescinded the Workers' Compensation Law Judge's finding to the extent that it was premised on a determination that claimant was an "essential worker," finding that it had no bearing on his claim for workers' compensation benefits.

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