

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

Decided and Entered: May 30, 2024

CV-22-2121

In the Matter of the Claim of STEVE
PERSAUD,
Appellant,
v

ASH & PETERKIN CENTRAL LOCK
COMPANY, INC., et al.,
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: April 23, 2024

Before: Pritzker, J.P., Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ.

Steve Persaud, East Elmhurst, appellant pro se.

Stockton, Barker & Mead, LLP, Troy (*Sarah A. Pattee* of counsel), for Ash & Peterkin Central Lock Company, Inc. and another, respondents.

Ceresia, J.

Appeal from a decision of the Workers' Compensation Board, filed October 6, 2022, which denied claimant's application for reconsideration and/or full Board review.

In 2000, claimant suffered a work-related injury and his claim for workers' compensation benefits was established for an injury to his back. Claimant received

benefits for a temporary disability until November 2012, at which point the employer's workers' compensation carrier suspended payment due to a lack of up-to-date medical evidence of a continued disability. Hearings were held on the claim between February 2014 and March 2017, during which claimant contended that he was owed further benefits and was advised that he needed to provide up-to-date medical evidence of a disability. Following a March 9, 2017 hearing, the Workers' Compensation Law Judge concluded that all "[i]ssues were resolved on prior findings and awards" and that no further action was planned by the Workers' Compensation Board.

In February 2022, claimant filed a request for assistance form contending, among other things, that he was classified with a permanent partial disability in 2007, that he was still owed benefits awarded in 2012 and that the carrier had committed fraud. Following a hearing, the Workers' Compensation Law Judge concluded that claimant had been paid for all previous awards. In a July 2022 decision, the Board affirmed, finding no evidence that claimant was ever classified by the Board with a permanent disability and that all awards on this claim were timely paid, that claimant had not produced up-to-date medical evidence in a timely manner and was not owed any further payments, and that the carrier had not committed fraud. Thereafter, claimant applied for reconsideration and/or full Board review of the Board's July 2022 decision. In an October 2022 decision, the Board denied claimant's application, and claimant's appeal from that decision ensued.

We affirm. Initially, inasmuch as claimant has only appealed from the Board's October 2022 decision denying his application for reconsideration and/or full Board review, the merits of the Board's July 2022 decision are not properly before us (*see Matter of Mascali v Town/Vil. of Harrison*, 203 AD3d 1424, 1425 [3d Dept 2022]; *Matter of Gorbea v Verizon N.Y. Inc.*, 201 AD3d 1168, 1169 [3d Dept 2022]). "As such, our review is limited to whether the Board's denial of the application was arbitrary and capricious or otherwise constituted an abuse of discretion" (*Matter of Singletary v Schiavone Constr. Co.*, 174 AD3d 1240, 1242 [3d Dept 2019] [internal quotation marks and citations omitted]; *see Matter of Eastman v Glens Falls Hosp.*, 202 AD3d 1232, 1233 [3d Dept 2022]).

"To succeed on an application for reconsideration and/or full Board review, the applicant must demonstrate that newly discovered evidence exists, that there has been a material change in condition, or that the Board improperly failed to consider the issues raised in the application for review in making its initial determination" (*Matter of Lopez v Platoon Constr., Inc.*, 212 AD3d 953, 954 [3d Dept 2023] [internal quotation marks, brackets and citations omitted]; *see Matter of McCormick v Terryville Fire Dist.*, 189

AD3d 1868, 1869 [3d Dept 2020]). Upon our review of the record, we find that claimant did not set forth any newly discovered evidence or allege a material change in condition to warrant granting his application. Moreover, the Board, in the underlying July 2022 decision, considered the issues that were before it, including claimant's allegations that he was still owed benefits payments and that he was a victim of fraud by the carrier. Accordingly, we conclude that the Board's denial of claimant's application for reconsideration and/or full Board review was neither arbitrary and capricious nor an abuse of discretion (*see Matter of Petre v Allied Devices Corp.*, 213 AD3d 1117, 1118 [3d Dept 2023]; *Matter of Beiter v Neth & Son, Inc.*, 213 AD3d 1088, 1090 [3d Dept 2023]).

Pritzker, J.P., Reynolds Fitzgerald, McShan and Mackey, 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.

Robert D. Mayberger
Clerk of the Court