

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

Decided and Entered: October 15, 2026

CV-23-2419
CV-24-1269

In the Matter of the Claim of
MICHELLE L. GREEK, as
Executor of the Estate of
WALTER E. GREEK,
Deceased,
Respondent,

v

MEMORANDUM AND ORDER

DANVILLE CENTRAL SCHOOL
DISTRICT,
Appellant.

WORKERS' COMPENSATION
BOARD,
Respondent.

(And Another Related Claim.)

Calendar Date: September 10, 2026

Before: Aarons, J.P., Reynolds Fitzgerald, Fisher, Powers and Mackey, JJ.

Habberfield Kaszycki, LLP, Buffalo (*Matthew R. Musial* of counsel), for appellant.

Connors & Ferris, LLP, Rochester (*Sean M. Meritt* of counsel), for Michelle L. Greek, respondent.

Letitia James, Attorney General, New York City (*Marjorie S. Leff* of counsel), for Workers' Compensation Board, respondent.

Reynolds Fitzgerald, J.

Appeals (1) from a decision of the Workers' Compensation Board, filed November 20, 2023, which denied review of a decision by the Workers' Compensation Law Judge, (2) from a decision of said Board, filed May 21, 2025, which, among other things, amended its prior analysis and decision filed November 20, 2023 and ruled that decedent's claim for workers' compensation benefits did not abate upon his death, (3) from a decision and amended decision of said Board, filed August 1, 2024 and May 30, 2025, which ruled, among other things, that decedent sustained an accidental injury arising out of and in the course of his employment, and (4) from a decision and amended decision of said Board, filed June 18, 2024 and June 25, 2025, which ruled that decedent's death was causally related to his employment and established claimant's claim for workers' compensation death benefits.

In 2022, Walter E. Greek (hereinafter decedent) worked as a school bus driver for the self-insured employer. Decedent was also under the care of a cardiologist for "extra heartbeats" known as premature ventricular contractions and cardiomyopathy, although those conditions had been treated and he had been found to pose "no imminent risk of syncopal episode or other symptoms that would affect [his] ability to safely operate a commercial vehicle." On April 5, 2022, he was driving an empty bus into the parking lot of the employer's bus garage when he lost control due to an apparent medical event and crashed into another bus parked nearby. Decedent was found to be unresponsive and in ventricular fibrillation cardiac arrest, meaning "a chaotic heart rhythm that doesn't perfuse any of the organs, such as the brain, the heart, or anything else." First responders began cardiopulmonary resuscitation on decedent and transported him to a local hospital, but his normal heart rhythm could not be restored for approximately an hour. Decedent was then transported to a different hospital and diagnosed with neurologic injuries caused by the prolonged lack of blood circulation, as well as lung, kidney and rib injuries. He remained comatose until his death on April 10, 2022.

These claims ensued, one for workers' compensation benefits (hereinafter the lifetime claim) and the other for compensation in a death case (hereinafter the death benefits claim). After decedent's surviving spouse passed away, claimant prosecuted both claims in her role as the executor of decedent's estate. With regard to the lifetime claim, a Workers' Compensation Law Judge (hereinafter WCLJ) rejected the employer's argument that the lifetime claim should abate due to decedent's death, found prima facie medical evidence for injuries to the kidney, ribs and lungs, and directed further proceedings. Upon

the employer's administrative appeal, the Workers' Compensation Board initially issued a decision in November 2023 in which it declined to review the WCLJ's decision. The Board then issued an amended decision in May 2025 in which it reached the merits and, referencing the subsequent developments in the lifetime claim, affirmed. In the interim, the parties appeared for a December 2023 hearing where, among other things, the WCLJ rejected the employer's request to mark the lifetime claim as "no further action" due to the failure of the deceased decedent to appear at the prehearing conference nearly 19 months earlier and established the claim for work-related kidney, lung and rib fracture injuries. The Board affirmed, in an August 2024 decision that was amended and superseded by a May 2025 amended decision. The employer appeals from the November 2023 and August 2024 decisions, as well as the May 2025 amended decisions.

As for the death benefits claim, which largely traveled with the lifetime claim, the WCLJ issued a decision in November 2023 that, among other things, determined that decedent had a work-related injury resulting in death and directed the employer to make payments pursuant to Workers' Compensation Law § 16. In a June 2024 decision and a June 2025 amended decision, the Board affirmed. The employer appeals from both of those decisions as well.

The appeals from the Board's November 2023, August 2024 and June 2024 decisions – which were explicitly amended and superseded by its three decisions issued in May 2025 and June 2025 – are dismissed as moot (*see Matter of Capers v Jacobi Med. Ctr.*, 235 AD3d 1052, 1053 n [3d Dept 2025]; *Matter of Pomerantz v City of Newburgh Fire Dept.*, 214 AD3d 1269, 1270 n 2 [3d Dept 2023], *lv denied* 41 NY3d 902 [2024]). Upon the appeals from the remaining decisions, we affirm.

First, the Board properly rejected the employer's objection to the absence of the already-dead decedent from the prehearing conference on the lifetime claim. As the employer points out, the Board's rules direct that if a "claimant fails to appear or is otherwise not prepared to proceed [at the prehearing conference], the case shall be marked as no further action" (12 NYCRR 300.38 [g] [16] [represented claimants]; *see* 12 NYCRR 300.33 [f] [9] [unrepresented claimants]). Although those rules do not explicitly authorize a waiver, the employer's "ability to waive issues, including its defenses, expressly or by reason of its conduct, cannot seriously be denied" (*Matter of Collier v Brightwater Beer & Soda Distrib.*, 147 AD2d 868, 870 [3d Dept 1989], *affd* 75 NY2d 949 [1990]; *accord Matter of Hernandez v Excel Recycling Corp.*, 31 AD3d 1091, 1092 [3d Dept 2006]). The employer here did not object to the potential rule violation until

well after the prehearing conference had finished in May 2022, only doing so more than a year and a half later, after extensive further proceedings had occurred. Under those circumstances, the Board did not abuse its discretion in determining that the employer's objection was waived because it was "not asserted at the proper time" (*see Matter of Collier v Brightwater Beer & Soda Distrib.*, 147 AD2d at 870; *compare Matter of Lazalee v Wegman's Food Mkts., Inc.*, 40 NY3d 458, 461-462 [2023] [no waiver where request for mandatory adjournment of hearing was made at the hearing itself]).

Next, "[w]here, as here, 'an injured employee dies before his or her workers' compensation claim can be adjudicated, the Board has discretion to continue the proceeding, resolve any controversies and, if appropriate, make an award of workers' compensation benefits' " (*Matter of Brady v Town of Warwick*, 244 AD3d 1699, 1700 [3d Dept 2025], quoting *Matter of Scano v DOCCS Taconic Corr. Facility*, 195 AD3d 1325, 1326 [3d Dept 2021]). Abatement of the claim may be warranted, however, "where the record is undeveloped and the employer or carrier is unable to cross-examine the deceased claimant regarding his or her allegation of a work-related injury or subject him or her to an independent medical examination on controverted issues such as causation and any alleged disability" (*Matter of Scano v DOCCS Taconic Corr. Facility*, 195 AD3d at 1327 [internal quotation marks, brackets and citations omitted]). The Board observed here that the proof in the record included surveillance video footage of the accident and the medical records of decedent's subsequent hospitalization, leaving no doubt that the accident occurred in the course of decedent's employment and led to specific injuries. The employer was further free to, and did, retain a physician to conduct an independent review of decedent's medical records to address the disputed question of the causal link between decedent's work and his injuries. Because substantial evidence supports the Board's finding that the employer could sufficiently develop the record and be heard on the issues in dispute despite decedent's death, the Board did not abuse its discretion in finding abatement of the lifetime claim to be unwarranted (*compare id.* at 1327-1328; *Employer: Maxons Restorations Inc.*, 2022 WL 3574983, *5, 2022 NY Wrk Comp LEXIS 4348, *11-12 [WCB Nos G258 1314, G236 2277, Aug. 15, 2022]).

With regard to the establishment of the lifetime claim for work-related kidney, lung and rib fracture injuries, "[w]hether a compensable accident has occurred is a question of fact to be resolved by the Board and its determination will not be disturbed when supported by substantial evidence" (*Matter of Larosa v ABC Supply Co., Inc.*, 159 AD3d 1321, 1322 [3d Dept 2018] [internal quotation marks and citations omitted]; *accord Matter of Bosque v Prime Support Inc.*, 226 AD3d 1280, 1281 [3d Dept 2024]).

An employee's injury is compensable when it arises both out of and in the course of employment, meaning that "it must be a natural incident to the work[,] one of the risks connected with the employment, flowing therefrom as a natural consequence and directly connected with the work," and "must have been received while the employee was doing the work for which he [or she] was employed" (*Matter of Malacarne v City of Yonkers Parking Auth.*, 41 NY2d 189, 193 [1976] [internal quotation marks, ellipsis and citation omitted]). "Absent substantial evidence to the contrary, Workers' Compensation Law § 21 (1) provides a presumption that an accident that occurs in the course of employment also arises out of that employment" (*Matter of Larosa v ABC Supply Co., Inc.*, 159 AD3d at 1321 [internal quotation marks and citations omitted]; see *Matter of Leon v Monadnock Constr. Inc.*, 208 AD3d 1415, 1415-1416 [3d Dept 2022]; *Matter of Worthington v Samaritan Med. Ctr.*, 124 AD3d 1155, 1156 [3d Dept 2015]).

The accident here indisputably occurred while decedent was working and led to injuries, leaving the questions of whether the accident and certain of those injuries also arose out of his employment. The employer argued that they did not, in that the accident occurred because decedent suffered unrelated ventricular fibrillation that caused him to lose consciousness while driving and that efforts to resuscitate him after that unrelated event injured his ribs and lungs. Decedent's longtime treating cardiologist testified, however, that decedent had been under treatment for conditions such as premature ventricular contractions since 2017 and was "doing quite well" by the time of the accident. The cardiologist added that it was "unclear" what caused decedent to go into ventricular fibrillation and it would have been "surprising" for a premature ventricular contraction to do so given the lack of any prior indication that decedent was prone to sustained abnormal heart rhythms. The cardiologist stated, however, that chest trauma could cause such an arrhythmia. Another cardiologist who treated decedent after the accident agreed that chest trauma could have precipitated his fatal arrhythmia, testifying that it was "impossible to be absolutely certain" whether the arrhythmia occurred before the accident or was caused by trauma he sustained in the accident itself.

The Board credited the foregoing testimony and, moreover, observed that the physician who conducted a review of decedent's medical records on behalf of the employer admitted that he was merely assuming that decedent had lost consciousness before the accident due to a cardiac event. The Board therefore found that the credible medical proof did not establish that an unrelated cardiac event caused decedent to lose consciousness prior to the accident and that all of decedent's ensuing injuries were compensable since they were either caused by the work-related accident itself or by

necessary medical treatment for the injuries he sustained. Notwithstanding evidence that might support a different result, "[a]ccording deference to the Board's resolution of credibility issues with regard to the conflicting medical evidence and witness testimony, we find that substantial evidence supports the Board's determination that claimant's injuries arose out of and in the course of [his] employment" (*Matter of Worthington Samaritan Med. Ctr.*, 124 AD3d at 1156 [internal citations omitted]; see *Matter of Oathout v Averill Park Cent. Sch.*, 142 AD3d 749, 750 [3d Dept 2016]; *Matter of Booker v Intermagnetics Gen. Corp.*, 53 AD3d 743, 744-745 [3d Dept 2008]).

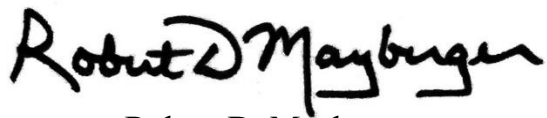
Finally turning to the establishment of the death benefits claim, "[i]n demonstrating a causal connection between decedent's death and his employment, claimant was not required to demonstrate that decedent's work-related illness was the sole or most direct cause of his death, as it was sufficient to establish that the compensable illness was a contributing factor in decedent's demise" (*Matter of Hickey v Skanska-Walsh JV/Pace Car Plumbing LLC*, 224 AD3d 1018, 1020 [3d Dept 2024] [internal quotation marks and citations omitted]; see *Matter of Pickerd v Paragon Envtl. Constr., Inc.*, 161 AD3d 1470, 1471 [3d Dept 2018]). Claimant here came forward with decedent's death certificate, which named complications of probable cardiac arrhythmia due to nonischemic cardiomyopathy as the immediate cause of death but cited "[m]ultiple blunt force injuries" as significant contributing factors. The Board credited the testimony of the medical examiner who prepared that death certificate and explained that it was more likely than not that the traumatic injuries decedent sustained in the accident placed additional stress on his already frail heart and contributed to his death. The Board further credited the testimony of the cardiologist who treated decedent after the accident that he was unable to say that the traumatic injuries played no role in decedent's death and had no reason to dispute the assessment of the medical examiner. We accord deference to those credibility assessments and find that, notwithstanding proof in the record that might support a different result, substantial evidence in the record also supports the Board's establishment of the death benefits claim (see *Matter of Polonski v Town of Islip*, 220 AD3d 1031, 1033 [3d Dept 2023], *lv denied* 41 NY3d 905 [2024]; *Matter of Pickerd v Paragon Envtl. Constr., Inc.*, 161 AD3d at 1471; *Matter of Brown v Clifton Recycling*, 1 AD3d 735, 736 [3d Dept 2003]). To the extent that they are not addressed by the foregoing, the employer's remaining arguments have been examined and are lacking in merit.

Aarons, J.P., Fisher, Powers and Mackey, JJ., concur.

ORDERED that the appeals from the November 20, 2023, June 18, 2024 and August 1, 2024 decisions are dismissed, as moot, without costs.

ORDERED that the May 21, 2025, May 30, 2025 and June 25, 2025 amended decisions are affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large, stylized "R" and "M".

Robert D. Mayberger
Clerk of the Court