

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

Decided and Entered: October 8, 2026

CV-25-0231

In the Matter of the Claim of GERARD
MULLIGAN,
Respondent,
v

MOY CONSTRUCTION CORP.
et al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: September 15, 2026

Before: Garry, P.J., Clark, Aarons, Reynolds Fitzgerald and Ryba, JJ.

Goldberg Segalla LLP, Rochester (*Bradford J. Reid* of counsel), for appellants.

Law Offices of Joseph A. Romano, PC, Yonkers (*Joseph A. Romano* of counsel),
for Gerard Mulligan, respondent.

Letitia James, Attorney General, New York City (*Nina M. Sas* of counsel), for
Workers' Compensation Board, respondent.

Aarons, J.

Appeal from a decision of the Workers' Compensation Board, filed January 8, 2025, which ruled, among other things, that claimant sustained a causally related injury and established his claim for workers' compensation benefits.

Claimant, a carpenter, was asked to work on a shed containing animals at the residence of his employer's owner. When he arrived, the owner's spouse, who is vice president of the employer, asked claimant to help him get a donkey that had gotten loose into the shed. They were able to force the donkey into the shed and claimant unloaded his tools from his vehicle. Claimant began experiencing chest pains, lightheadedness and vomiting. He stopped working and drove home, and his son brought him to the hospital where it was determined that he had suffered a heart attack. Claimant thereafter filed a claim for workers' compensation benefits alleging that he suffered the heart attack as a result of work-related physical strain. Following hearings, a Workers' Compensation Law Judge (hereinafter WCLJ) found that the employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) had filed a notice of controversy beyond the 25 days of the mailing of the notice that the matter had been indexed as required by Workers' Compensation Law § 25 (2) (b). "Accordingly, the carrier was barred from pleading that no employer-employee relationship existed, that no accident occurred and that there was no injury arising out of and in the course of the employment" (*Matter of Moe v America Ootoya Chelsea*, 246 AD3d 1165, 1166 [3d Dept 2026]; *see* Workers' Compensation Law § 25 [2] [b]). Nevertheless, the WCLJ found that claimant had not demonstrated a work-related injury, noting that claimant had not produced the emergency room records, and disallowed the claim. Claimant administratively appealed that decision to the Workers' Compensation Board, arguing, among other things, that the emergency room records were in the case file. The Board modified the WCLJ's decision, affirming the finding that the carrier had filed an untimely notice of controversy but, after a review of the record, found a causal relationship between the heart attack and claimant's employment and established the claim. The carrier appeals.

We affirm. The carrier's failure to timely file a notice of controversy requires the Board "to determine, without regard to the carrier's proof, whether claimant demonstrated that the injury was work-related and prohibits the carrier from offering testimony to dispute claimant's evidence on causation" (*Matter of McAndrews v Buffalo Sewer Auth.*, 171 AD3d 1426, 1427 [3d Dept 2019] [internal quotation marks, brackets, ellipses and citation omitted]; *see Matter of Cunningham v New York City Tr. Auth.*, 122 AD3d 1042, 1042 [3d Dept 2014]). "In order to establish [his] claim for benefits, claimant bore the

burden of demonstrating, by competent medical evidence, that a causal connection existed between [his] injuries and [his] employment" (*Matter of Wen Liu v Division of Gen. Internal Medicine, Mount Sinai Sch. of Medicine*, 186 AD3d 1770, 1771 [3d Dept 2020] [internal quotation marks, brackets and citations omitted], *lv denied* 36 NY3d 904 [2020]).

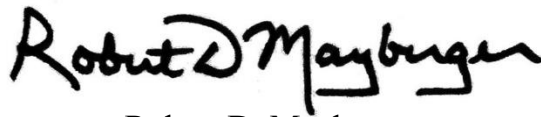
Claimant testified that after they initially got the donkey into the shed, the donkey tried to break out again. Claimant grabbed the donkey to keep it in the shed, and claimant testified that he "overexaggerated" and "over accelerated" himself with that effort. Claimant's emergency room records indicate that he reported that he felt chest tightness "while exerting himself at work" and he was diagnosed with having suffered a heart attack.¹ Claimant's treating physician opined that claimant's heart attack was causally related to his overexertion at work when dealing with the donkey. "[A]s the Board's decision was based upon its assessment of witness credibility, of which it is the sole arbiter, we discern no basis upon which to disturb its factual finding that there was sufficient, un rebutted and credible medical evidence to support a finding of a causal relationship" (*Matter of McAndrews v Buffalo Sewer Auth.*, 171 AD3d at 1428; see *Matter of Moe v America Ootoya Chelsea*, 246 AD3d at 1168). The carrier's contention that claimant was not covered under its workers' compensation policy "was not raised before the [WCLJ] or the Board and, therefore, is not properly before us" (*Matter of Feldman v New York City Tr. Auth.*, 215 AD3d 1197, 1198 [3d Dept 2023]; see *Matter of Hernandez v AABCO Sheet Metal*, 206 AD3d 1420, 1421 [3d Dept 2022]).

Garry, P.J., Clark, Reynolds Fitzgerald and Ryba, JJ., concur.

¹ Although the emergency room records reflect that claimant reported that he was not feeling well while driving to work, the emergency room physician subsequently corrected that entry in the records, clarifying that claimant was on his way home from work when he was experiencing his symptoms.

ORDERED that the decision is 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 initial "R" and "M".

Robert D. Mayberger
Clerk of the Court