

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

Decided and Entered: October 8, 2026

CV-25-1060

In the Matter of the Claim of
BERNARDO CASTILLO
GONZALEZ,

Respondent,

v

MEMORANDUM AND ORDER

EXPO CONCRETE, LLC, et al.,
Appellants.

WORKERS' COMPENSATION
BOARD,

Respondent.

Calendar Date: September 15, 2026

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

Chartwell Law, New York City (*Nicholas R. Switach* of counsel), for appellants.

Elefterakis, Elefterakis & Panek, New York City (*Oliver R. Tobias* of counsel), for
Bernardo Castillo Gonzalez, respondent.

Letitia James, Attorney General, New York City (*Alison Kent-Friedman* of
counsel), for Workers' Compensation Board, respondent.

Clark, J.

Appeal from a decision of the Workers' Compensation Board, filed March 31, 2025, which, among other things, amended the claim to include injuries to claimant's back and neck.

On April 20, 2023, claimant, a carpenter, informed his employer that, while working, he had tripped over some material on the floor and fell, injuring his face and left arm. He was sent to the hospital and was diagnosed with an orbital wall fracture, subdermal hematoma and left forearm contusion. On May 4, 2023, claimant's treating physician reported that claimant informed him that he had fallen from a height of 10 feet at work and, based upon his examination, he concluded that claimant suffered causally related injuries to his head, neck, back, right arm, right hand and left elbow. Claimant thereafter filed a claim for workers' compensation benefits based upon the April 20, 2023 accident, indicating that he had stepped on a piece of plywood that then broke, causing him to fall through to the ground below, resulting in injuries to his neck, back, left shoulder, left elbow, left wrist, a fracture of his left radius and orbital bone, and headaches.

In a September 5, 2023 decision, a Workers' Compensation Law Judge (hereinafter WCLJ) established the claim for a facial bone fracture and an injury to the left elbow. The WCLJ also found prima facie medical evidence for injuries to claimant's neck and back. The employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) did not appeal that decision. During the ensuing hearings regarding amending the established claim to include neck and back injuries, the carrier raised a Workers' Compensation Law § 114-a violation issue and the lack of proper notice of the accident. At the conclusion of the hearings, the WCLJ, in a March 2024 decision, established so much of the claim alleging causally related neck and back injuries, determined that the employer was provided proper notice of the accident and found insufficient evidence to support a finding that claimant had violated Workers' Compensation Law § 114-a. On administrative appeal, the Workers' Compensation Board denied review of the carrier's challenge to a proper notice of the accident due to its failure to appeal the WCLJ's September 2023 decision, and otherwise affirmed the WCLJ's March 2024 decision. The carrier appeals.

The carrier argues that the Board erred in not considering its contention that, by initially giving an inaccurate description of how he was injured, claimant failed to provide proper notice of the accident pursuant to Workers' Compensation Law § 18.

Although claimant informed the employer the day of the accident that he tripped and fell over material left on the floor, his treating physician's May 4, 2023 report indicates that claimant informed him that he fell from a height of 10 feet, and claimant's C-3 form, filed on May 11, 2023, indicates that he stepped on a piece of plywood that broke, causing him to fall through to the ground below. Accordingly, contrary to the carrier's contention, the fact that claimant had presented different versions of the accident was well documented in the Board's case file prior to the WCLJ's September 2023 decision establishing the claim. Despite having an opportunity to raise an issue regarding the discrepancy in claimant's accounts of the accident, there is no indication in this record that the issue was raised before the WCLJ, and the carrier did not appeal the WCLJ's September 2023 decision to the Board. In light of the foregoing, we find no abuse of discretion in the Board's refusal to now address allegations of improper notice of the claim (*see* Workers' Compensation Law § 123; *Matter of White v Fuji Bank, Ltd.*, 8 AD3d 817, 817-818 [3d Dept 2004]; *see also* Workers' Compensation Law § 23; *Matter of Imbriani v Berkar Knitting Mills*, 277 AD2d 727, 730 [3d Dept 2000]).

The carrier also argues that claimant's misrepresentation as to how he fell constituted a violation of Workers' Compensation Law § 114-a. Workers' Compensation Law § 114-a provides, in relevant part, that a claimant who knowingly makes a false statement or representation as to a material fact for the purpose of obtaining workers' compensation benefits or influencing any determination relative thereto shall be disqualified from receiving any compensation directly attributable to such false statement or representation (*see Matter of Augone v Stop & Shop Supermarket Co. LLC*, 236 AD3d 1283, 1284 [3d Dept 2025]; *Matter of Linane v Gristede's Food Inc.*, 231 AD3d 1219, 1219 [3d Dept 2024]; *Matter of Ordaz v Jerrick Assoc. Inc.*, 194 AD3d 1331, 1332 [3d Dept 2021]). "Whether a claimant has violated the statute lies within the province of the Board, which is the sole arbiter of witness credibility, and its decision will not be disturbed if supported by substantial evidence" (*Matter of Alzate v Quality Bldg. Servs. Corp.*, 238 AD3d 1437, 1438-1439 [3d Dept 2025] [internal quotation marks and citations omitted], *lv denied* 44 NY3d 910 [2026]; *see Matter of Bennett v J-Track LLC*, 182 AD3d 967, 969 [3d Dept 2020]).

At the hearing, claimant admitted that his initial description of the accident to the employer on the day it occurred – that he tripped over material left on the floor – was inaccurate and testified that he fell through a piece of broken plywood flooring onto the floor below. Claimant explained that the reason he gave a different account of how he fell to the employer that day was that, after his fall, coworkers told him that if he reported that he fell through the floor, he would get the coworkers and the employer in trouble and

the coworkers could potentially lose their jobs. He also explained that he was in pain at the time and wanted to get to the hospital as quickly as possible. The Board credited claimant's testimony regarding the motivation for him providing a different account of how he fell to his employer. The record also reflects that claimant advised his treating physician that he had fallen from a 10-foot height and the Board noted that the carrier's consultant was advised of both versions of the accident and, although he offered no opinion as to a causal relationship, he reported that claimant's complaints regarding injuries to his face, neck, back, left shoulder, left elbow and left wrist were consistent with the examiner's objective clinical findings. Deferring to the Board's credibility determinations, and given that the carrier does not dispute that claimant fell while working, we find no error in the Board concluding that claimant's initial misrepresentation pertaining to the mechanism of the accident was not made for the purpose of obtaining benefits and, therefore, the Board's decision that claimant did not violate Workers' Compensation Law § 114-a will not be disturbed (*see Matter of Hartman v Arric Corp.*, 224 AD3d 959, 961 [3d Dept 2024]; *Matter of Wait v Hudson Val. Community Coll.*, 120 AD3d 1456, 1457 [3d Dept 2014]).

Finally, as for the establishment of the portion of the claim alleging neck and back injuries, claimant bore the burden of demonstrating, "by competent medical evidence, a causal relationship between [such injuries] and his . . . employment" (*Matter of Maldonado v Doria, Inc.*, 192 AD3d 1247, 1248 [3d Dept 2021] [internal quotation marks and citations omitted]; *see Matter of Blanch v Delta Air Lines*, 204 AD3d 1203, 1205 [3d Dept 2022]). "[T]he Board is empowered to determine the factual issue of whether a causal relationship exists based upon the record, and its determination will not be disturbed when supported by substantial evidence" (*Matter of Brown v Van Liner Ins. Co.*, 227 AD3d 1331, 1333 [3d Dept 2024] [internal quotation marks and citations omitted]; *see Matter of Flores v Millennium Servs., LLC*, 215 AD3d 1146, 1147 [3d Dept 2023]; *Matter of Brennan v Village of Johnson City*, 213 AD3d 1058, 1059 [3d Dept 2023]). Further, "the Board is vested with the discretion to assess the credibility of medical witnesses, and its resolution of such issues is to be accorded great deference, particularly with regard to issues of causation" (*Matter of Martinez v RNC Indus., LLC*, 213 AD3d 1109, 1110 [3d Dept 2023] [internal quotation marks and citations omitted]; *see Matter of Brennan v Village of Johnson City*, 213 AD3d at 1059).

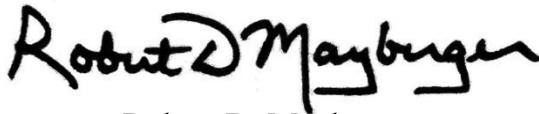
Claimant's treating physician opined that claimant's injuries to his neck and back were causally related to his fall. Although the carrier's consultant did not render an opinion as to causation, he did find that claimant's reported injuries were consistent with the consultant's objective clinical findings. In light of the medical evidence, and deferring

to the Board's credibility assessments, including crediting claimant's testimony regarding the accident and why he gave differing accounts of his fall, we conclude that substantial evidence supports the Board's determination that claimant sustained causally related neck and back injuries and properly amended the established claim to include those sites (*see Matter of Brown v Van Liner Ins. Co.*, 227 AD3d at 1334; *Matter of Martinez v RNC Indus., LLC*, 213 AD3d at 1110-1111).

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

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, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court