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

Decided and Entered: November 19, 2026 CV-25-1098

In the Matter of the Claim of ERICH SCHINDLAR,
Appellant,
v

INCORPORATED VILLAGE OF SANDS POINT et al.,
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: October 22, 2026

Before: Clark, J.P., Reynolds Fitzgerald, McShan, Mackey and Ryba, JJ.

John F. Clennan, Ronkonkoma, for appellant.

Tiffany Gordon, State Insurance Fund, Albany (*Ginu Jacob* of counsel), for Incorporated Village of Sands Point and another, respondents.

Mackey, J.

Appeal from a decision of the Workers' Compensation Board, filed June 11, 2025, which ruled that claimant's need for right shoulder surgery was not causally related to his prior compensable injury.

In May 2004, claimant suffered work-related injuries and his workers' compensation benefits claim was established for injuries to his neck, back, right shoulder and right wrist. Claimant returned to full-time work shortly thereafter and he was ultimately denied lost wages benefits because he was not on disability for more than seven days. In June 2004, claimant's treating physician found full range of motion and diagnosed a right shoulder contusion and opined that claimant could continue working full time. In August 2005, the employer's consultant opined that claimant's injury to his right shoulder had resolved.

On September 22, 2021, orthopedic surgeon Brian Neri requested authorization to perform surgery on claimant's right shoulder under the 2004 claim, based upon a September 17, 2021 MRI that revealed a torn rotator cuff. The employer's workers' compensation carrier denied the claim on the grounds that the rotator cuff tear was not causally related to the 2004 accident. A Workers' Compensation Law Judge found that claimant had not demonstrated that the tear was causally related to the 2004 accident and denied authorization for the surgery "without prejudice." Claimant did not appeal that decision to the Workers' Compensation Board. In May 2022, another orthopedic surgeon, Justin Mirza, requested authorization to perform surgery on claimant's right shoulder under the 2004 claim due to the rotator cuff tear. Once more the carrier denied the request, and a Workers' Compensation Law Judge again found that claimant had not demonstrated a causal relationship to the 2004 accident and denied authorization for the surgery. Upon administrative review, the Board affirmed, and claimant appeals.

We affirm. Claimant bears the burden of establishing a causal relationship when "seek[ing] surgical authorization for a procedure allegedly attributable to an established work-related injury" (*Matter of Yolinsky v Village of Scarsdale*, 202 AD3d 1262, 1264 [3d Dept 2022]; *see Matter of Oparaji v Books & Rattles*, 147 AD3d 1165, 1166 [3d Dept 2017], *lv denied* 29 NY3d 918 [2017]). "The 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 Howard v New York City Dept. of Educ.*, 244 AD3d 1435, 1436 [3d Dept 2025] [internal quotation marks, brackets and citations omitted]; *see Matter of Gunness v Prime Piping & Heating Inc.*, 234 AD3d 1082, 1083 [3d Dept 2025]). "[A] medical opinion on the issue of causation must signify a probability as to the underlying cause of the claimant's injury which is supported by a rational basis" (*Matter of DeWolf v Wayne County*, 228 AD3d 1218, 1218-1219 [3d Dept 2024] [internal quotation marks and citations omitted], *lv dismissed & denied* 43 NY3d 955 [2025], *appeal dismissed* 43 NY3d 956 [2025]; *see Matter of Song v City of N.Y. Dept. of Bldgs.*, 232 AD3d 1005, 1006 [3d Dept 2024]).

"Although the Board can certainly rely upon a medical opinion as to causation even if it is not absolute or certain, it is also free to disregard the medical evidence that it finds unconvincing – including an opinion that is unsupported and speculative" (*Matter of Song v City of N.Y. Dept. of Bldgs.*, 232 AD3d at 1006-1007 [internal quotation marks and citations omitted]).

Claimant relied on the opinions of Mirza and Omar Hussamy, an orthopedic surgeon who examined claimant in 2024 on behalf of the carrier, who both found a causal relationship between claimant's 2004 accident and his need for rotator cuff surgery on his right shoulder. Mizra testified, however, that he had not reviewed claimant's medical records from 2004 and 2022, and he was unaware if claimant had received any medical treatment on his right shoulder since 2004. Hussamy, who was not deposed, noted in his report that claimant injured his right shoulder in 2004, that he did not miss any time from work at that time, that he had not received any medical treatment to his right shoulder from 2004 to 2021 and that he had stopped working in January 2022. Although Hussamy summarily concluded that claimant's need for surgery was causally related to the 2004 claim, he did not provide any basis for his opinion. Given the minimal lost time sustained by claimant in 2004 and the 17-year gap in treatment, the Board was justified in rejecting, as unsupported, the opinions of Mirza and Hussamy regarding a causal relationship and, therefore, substantial evidence supports the Board's finding that claimant failed to establish that his need for right shoulder rotator cuff surgery was causally related to his 2004 accident (*see Matter of Yolinsky v Village of Scarsdale*, 202 AD3d at 1265; *Matter of Bordonaro v Genesee County Sheriff's Off.*, 148 AD3d 1507, 1508-1509 [3d Dept 2017]).

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

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court