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

Decided and Entered: November 19, 2026 CV-25-1429

In the Matter of the Claim of JORDY J. SILVA,
Claimant,
v

CONSOLIDATED SCAFFOLDING et al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: October 14, 2026

Before: Aarons, J.P., Ceresia, Fisher, Powers and Corcoran, JJ.

Wenderoff Law Group APC, New City (*Jessica Feldman* of counsel), for appellants.

Letitia James, Attorney General, New York City (*Margaret Marron* of counsel), for respondent.

Ceresia, J.

Appeal from a decision of the Workers' Compensation Board, filed April 21, 2025, which ruled, among other things, that claimant's established claim for workers' compensation benefits was properly amended to include psychological injuries and injuries to his neck and back.

On October 27, 2022, claimant, a scaffold installer, was injured at work when a piece of iron fell on him as he was taking down hoist scaffolds. After going to the hospital for his injuries on October 29, claimant attempted to return to work on Tuesday, November 1 and Thursday, November 3 but experienced pain and informed his foreperson that he could not work due to his injuries. On Saturday, November 5, the foreperson allegedly terminated claimant's employment. A claim for workers' compensation benefits ensued, and, following a hearing, that claim was established for an injury to the right shoulder, while claimant was ordered to produce medical evidence as to additional claimed injuries. In a notice of decision, a Workers' Compensation Law Judge (hereinafter WCLJ) found prima facie medical evidence for amendment of the claim to include work-related injuries to claimant's neck and back as well as post-concussion syndrome (hereinafter PCS), major depressive disorder (hereinafter MDD) and anxiety. After additional hearings and the submission of deposition testimony from various physicians, the WCLJ found that there was sufficient credible medical evidence to establish and amend the claim for injuries to the upper back area and neck as well as for psychological injuries consisting of PCS and MDD.[1] As for what caused claimant to stop working, a WCLJ found that the carrier's witness failed to submit any evidence of claimant's alleged safety violations and therefore rejected the claim of the employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) that claimant's employment ended due to safety violations. Upon administrative review, the Workers' Compensation Board affirmed, and the carrier appeals.

We affirm. In determining claimant's request to amend his claim to include injuries to the neck and back as well as PCS and MDD, "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 Brennan v Village of Johnson City*, 213 AD3d 1058, 1059 [3d Dept 2023] [internal quotation marks, brackets and citations omitted]; *see Matter of Christensen-Mavrigiannakis v Nomura Sec. Intl., Inc.*, 175 AD3d 1748, 1752 [3d Dept 2019]). "In addition, as the party seeking benefits, claimant bears the burden of establishing, by competent medical evidence, causal connection or relationship between [his or her] employment and the claimed disability" (*Matter of Christensen-Mavrigiannakis v Nomura Sec. Intl., Inc.*, 175 AD3d at 1752 [internal quotation marks, brackets and citations omitted]; *see Matter of Blanch v Delta Air Lines*, 204 AD3d 1203, 1205 [3d

[1] The WCLJ also found that claimant had sustained a 75% degree of disability (temporary partial).

Dept 2022]). "Furthermore, where conflicting medical opinions are presented on the issue of causality, the Board is vested with the authority to resolve the conflicts and deference is accorded to its credibility determinations" (*Matter of Christensen-Mavrigiannakis v Nomura Sec. Intl., Inc.*, 175 AD3d at 1752 [internal quotation marks, brackets and citations omitted]; *see Matter of Jewett v New York City Tr. Auth.*, 174 AD3d 1254, 1254 [3d Dept 2019]). Even though a contrary conclusion also may be supported by substantial medical evidence, such fact does not provide a basis or require us to set aside the Board's determination (*see Matter of Kraus v Wegmans Food Markets, Inc.*, 156 AD3d 1132, 1135 [3d Dept 2017]; *see also Matter of Vega [Postmates, Inc.-Commissioner of Labor]*, 35 NY3d 131, 136 [2020]).

David Levy, a psychologist who provided treatment to claimant, reported in March 2023 that he diagnosed claimant with, among other conditions, PCS and MDD and found that claimant's neuropsychological state is causally and directly related to his work-related accident and injuries. Claimant reported being hit by a large piece of metal weighing up to 300 pounds when it fell and struck him on the hard hat that he was wearing. Claimant was unsure if he lost consciousness but stated that he started to see white and black dots and felt dizzy the rest of the day. Levy testified that claimant was suffering from anxiety and depression and he reported this on a patient questionnaire and Beck's depression inventory. Claimant also reported to Levy that he was experiencing severe neurological symptoms since the accident including difficulty with memory, attention, concentration and feelings of depression, anxiety and increased hypervigilance. Levy opined that, based upon claimant's test results, he had no reason to think claimant was exaggerating or exhibiting symptom magnification. Ranga Krishna, a neurologist who examined and provided treatment to claimant, documented that, following the accident, claimant had persistent complaints of headaches, dizziness, neck and lower back pain radiating into his upper and lower extremities with tingling and numbness, in addition to difficulty with focusing, concentrating, bending, pushing and pulling. Significantly, Krishna testified that an MRI of the brain with diffusion tensor imaging was done in January 2023, which revealed findings compatible with a traumatic brain injury. Krishna also performed an electroencephalogram to rule out seizure disorder as a cause of some of claimant's symptoms. Krishna noted the existence of clinical findings of neck spasms, neck range of motion deficits and sensorimotor deficits in the cervical and lumbar spine, which he found were consistent with cervical radiculopathy. Krishna testified that, as of January 2023, claimant had a temporary total disability with regard to all employment and that, as of August 2023, claimant had a temporary total disability as to construction work and a marked severe partial disability overall.

Consistent with the opinion of Krishna, Emil Stracar, a physiatrist who provided treatment to claimant beginning in November 2022 for, among other things, headaches, dizziness and cervical pain radiating to both upper extremities (right more than left), opined that, as of April 2023, the injuries were causally related to the workplace accident and claimant had a complete disability as to construction work. When claimant was discharged from Stracar's care in July 2023, he diagnosed claimant with post cervical and lumbosacral sprain and right shoulder sprain and opined that claimant required surgery on his right shoulder. As the Board indicated, it is also significant that Jeffrey Salkin, the carrier's consultant who performed an independent medical examination of claimant in June 2023, stated that claimant lost consciousness for about five minutes after the accident and that, upon examining claimant, he determined that claimant's neck and back injuries were causally related to the accident and that claimant had a "marked (75%) causally related disability." In view of the foregoing medical opinions, which were consistent in material respects, and according deference to the Board's assessments of credibility and resolution of conflicting medical evidence, we find that substantial evidence in the record supports its decision to amend the claim in the manner sought (*see Matter of Brennan v Village of Johnson City*, 213 AD3d at 1060; *Matter of Christensen-Mavrigiannakis v Nomura Sec. Intl, Inc.*, 175 AD3d at 1752; *compare Matter of Blanch v Delta Air Lines*, 204 AD3d at 1205-1206; *Matter of Jewett v New York City Tr. Auth.*, 174 AD3d at 1254-1255).

We reject the carrier's contention that claimant's loss of wages was not causally related to his disability and that he voluntarily removed himself from the labor market for reasons unrelated to his disability. "Generally, a claimant who voluntarily withdraws from the labor market is not entitled to workers' compensation benefits unless the claimant's disability caused or contributed to the withdrawal" (*Matter of Saporito v Office of Ct. Admin.*, 217 AD3d 1031, 1032 [3d Dept 2023] [internal quotation marks, ellipsis, brackets and citations omitted]). "Whether claimant has voluntarily withdrawn from the labor market is a factual issue, and the Board's determination of that issue will not be disturbed if supported by substantial evidence" (*Matter of Garcia v MCI Interiors, Inc.*, 173 AD3d 1575, 1575 [3d Dept 2019] [internal quotation marks and citations omitted]; *see Matter of Castro v Baybrent Constr. Corp.*, 187 AD3d 1296, 1297 [3d Dept 2020]). "[W]here the record evidence is inconsistent, the Board is warranted in rejecting testimony that fails to find support in documentary or other impartial evidence" (*Matter of Baumgarten v New York State Banking Dept.*, 279 AD2d 741, 741-742 [3d Dept 2001]; *see Matter of Butler v Trustforte Corp.*, 204 AD3d 1263, 1264 n [3d Dept 2022]).

Claimant explained in his testimony that, following the accident, he continued working and went to the hospital two days later. Claimant testified that he gave the foreperson a note from the hospital but that the foreperson told him that he needed to come back to work. Claimant returned to work the next week for a couple of days but stopped working because he was fired due to his injuries. The foreperson, who denied firing claimant, testified that he sent claimant home because the safety supervisor did not want claimant on the worksite because he had not followed safety regulations. Inasmuch as the Board is "the sole arbiter of witness credibility" (*Matter of Kennedy v 3rd Track Constructors*, 213 AD3d 1005, 1007 [3d Dept 2023] [internal quotation marks and citations omitted]), and "has broad authority to resolve factual issues based on credibility of witnesses and draw any reasonable inference from the evidence in the record" (*Matter of Czachurski v PAL Envtl.*, 189 AD3d 1866, 1867 [3d Dept 2020] [internal quotation marks and citation omitted]), the Board was entitled to credit claimant's testimony over that of the foreperson. Notably, the foreperson's testimony about claimant's purported safety violations was unsupported by any documentation, despite the WCLJ's multiple written orders requesting production of records of any safety violations. Given the foregoing, we find that substantial evidence supports the Board's conclusion that claimant's separation from employment and his continued unemployment thereafter were involuntary and due to his disability (*cf. Matter of Vankoevering v New York State Canal Corp.*, 211 AD3d 1301, 1303 [3d Dept 2022]; *compare Matter of Saporito v Office of Ct. Admin.*, 217 AD3d at 1033-1034; *Matter of Rivera v Joseph L. Balkan, Inc.*, 193 AD3d 1214, 1215-1216 [3d Dept 2021]).

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

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court