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

Decided and Entered: November 12, 2026 CV-24-1125

In the Matter of the Claim of
DEBORAH BAILEY,
Appellant,
v

CALEDONIA MUMFORD CENTRAL SCHOOL DISTRICT,
Respondent.

WORKERS' COMPENSATION BOARD,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: October 13, 2026

Before: Garry, P.J., Clark, Pritzker, Powers and Ryba, JJ.

Connors & Ferris, LLP, Rochester (*Gregory R. Connors* of counsel), for appellant.

Habberfield Kaszycki, LLP, Buffalo (*Eugene W. Lane* of counsel), for Caledonia Mumford Central School District, respondent.

Powers, J.

Appeal from a decision of the Workers' Compensation Board, filed June 11, 2024, which ruled, among other things, that claimant did not give timely written notice of injury and denied her claim for workers' compensation benefits.

Claimant, a school bus driver for the self-insured employer, allegedly sustained a work-related shoulder injury in February 2022 when she attempted to open the rear emergency door on the bus she had been driving. At that time, she told one of the employer's mechanics that the door was stuck but did not notify anyone that she had been injured when trying to open it. After seeking medical treatment and being scheduled for surgery to repair what turned out to be a torn rotator cuff, claimant informed the employer of the accident in either September 2022 or October 2022 and sought workers' compensation benefits. The employer objected to the claim upon the ground that claimant had not given timely written notice of the claim. Following a hearing, the Workers' Compensation Law Judge agreed and disallowed the claim. The Workers' Compensation Board affirmed, prompting this appeal by claimant.

We affirm. Workers' Compensation Law § 18 requires that a claimant seeking workers' compensation benefits give written notice of the claim to his or her employer within 30 days of sustaining a compensable injury (*see Matter of Andino v Structural Preserv. Sys.*, 222 AD3d 1132, 1132-1133 [3d Dept 2023]; *Matter of White v SEG Maintenance, Inc.*, 205 AD3d 1257, 1258 [3d Dept 2022]). A failure to give timely written notice may be excused by the Board if the claimant demonstrates that notice could not be given, that the employer or its agent had knowledge of the accident or that the employer was not prejudiced (*see Matter of Andino v Structural Preserv. Sys.*, 222 AD3d at 1133; *Matter of Galdon v Robert Basil Inc.*, 213 AD3d 1063, 1064 [3d Dept 2023]; *Matter of Napolitano v City of Batavia*, 194 AD3d 1336, 1336 [3d Dept 2021]). While the Board is vested with discretion to excuse a lack of timely written notice, it is not required to do so even if one of those grounds has been proven (*see Matter of Andino v Structural Preserv. Sys.*, 222 AD3d at 1133; *Matter of White v SEG Maintenance, Inc.*, 205 AD3d at 1258).

Claimant testified that, although she told one of the employer's mechanics about the stuck door in February 2022, she did not notify the employer about the accident until September 2022 despite having ongoing shoulder pain.[1] The Board correctly noted that

[1] The employer was obliged to file a first report of injury with the Board "[o]n or before the 18th day after the disability event or within 10 days after the employer has knowledge of the disability event, whichever period is the greater" (12 NYCRR 300.22 [b] [1]; *see* Workers' Compensation Law § 110; *Matter of Shakil v New York City Tr. Auth.*, 249 AD3d 1246, 1248 [3d Dept 2026]). The report filed by the employer in October 2022 stated that it had knowledge of claimant's injury in February 2022. However, the employer later advised that it was not notified of claimant's injury until

claimant telling a coworker about the stuck door was "not . . . sufficient to meet the statutory requirements" of notice to the employer (*Matter of Choudhury v Brooklyn Hebrew Home & Hosp.*, 46 AD2d 954, 954 [3d Dept 1974]). As claimant continued to work after the accident and failed to seek medical treatment for over two months, the Board further found that the employer lacked adequate knowledge of a work-related injury absent that notice (*see Matter of Napolitano v City of Batavia*, 194 AD3d at 1337-1338; *Matter of Taylor v Little Angels Head Start*, 164 AD3d 1512, 1513 [3d Dept 2018]). Finally, the Board found that claimant's delay in seeking medical attention and reporting the incident called "the veracity of the claim into question and prevented the [employer] from securing a contemporaneous medical opinion" and, based thereon, she did not demonstrate a lack of prejudice to the employer from the failure to provide timely notice (*see Matter of Rydstrom v Precision Carpentry of Westchester, Inc.*, 150 AD3d 1602, 1603 [3d Dept 2017], *lv denied* 30 NY3d 902 [2017]). As the record supports the foregoing findings, we discern no basis to disturb the Board's determination (*see Matter of Napolitano v City of Batavia*, 194 AD3d at 1337-1338; *Matter of Taylor v Little Angels Head Start*, 164 AD3d at 1513; *Matter of Rydstrom v Precision Carpentry of Westchester, Inc.*, 150 AD3d at 1602-1603).

Garry, P.J., Clark, Pritzker and Ryba, JJ., concur.

October 2022 and claimant herself acknowledged that she did not notify the employer until September 2022 at the earliest. Notwithstanding claimant's attempts to argue otherwise, the Board was free to determine from the foregoing that the date given on the first report of injury form was not dispositive (*compare Matter of Craciola v Lewis*, 233 App Div 437, 439 [3d Dept 1931], *with Matter of Bollard v Engel*, 254 App Div 162, 164 [3d Dept 1938], *affd* 278 NY 463 [1938]).

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court