

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

Decided and Entered: October 15, 2026

CV-23-0761

In the Matter of the Claim of
AARON BUSCEMI,
Appellant,

v

PRIME CARE COORDINATION et al.,
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: September 17, 2026

Before: Clark, J.P., Ceresia, McShan, Powers and Ryba, JJ.

John F. Clennan, Ronkonkoma, for appellant.

Law Office of Manson & McCarthy, New York City (*Jason L. Cassidy* of counsel), for Prime Care Coordination and another, respondents.

Ceresia, J.

Appeals (1) from a decision of the Workers' Compensation Board, filed November 1, 2022, which denied claimant's application for reconsideration and/or full Board review and (2) from a decision of the Workers' Compensation Board, filed August 15, 2025, which denied claimant's application to rehear and/or reopen claimant's workers' compensation claim.

In September 2020, claimant, who worked as a manager of quality and compliance performing desk and computer work, filed a claim for workers' compensation benefits, alleging that he sustained injuries to the head, eyes and ears in the form of migraines as a result of working in an office in a warehouse. Following a February 2021 hearing, a Workers' Compensation Law Judge (hereinafter WCLJ) found prima facie medical evidence for tinnitus and aggravation of a headache condition. Additional hearings and deposition testimony from examining physicians – including an independent medical examiner – ensued, after which the WCLJ disallowed the claim, finding that claimant did not produce sufficient credible medical evidence demonstrating that his tinnitus and aggravation of a headache condition were caused by "any work activity or work environmental factors." Upon administrative appeal, the Workers' Compensation Board affirmed. Claimant's ensuing application for reconsideration and/or full Board review was denied by the Board in a November 2022 decision, from which claimant appeals.¹

During the pendency of claimant's appeal, claimant requested that the Board reopen or rehear his claim based upon a letter from his treating physician seeking to further explain her prior sworn testimony on the cause of claimant's condition. In an August 2025 decision, the Board denied claimant's application, finding that claimant failed to accompany his application – which was predicated upon medical evidence that was not part of the record at the time of the Board's prior relevant decisions – with a sworn supporting affidavit. The Board also found that the additional proffered medical documentation from claimant's treating physician was consistent with the prior medical narratives considered by the Board and did not reveal any further material information that would warrant reopening/rehearing the claim. Claimant also appeals from the Board's August 2025 decision.

We affirm. With regard to the Board's denial of claimant's request for reopening or rehearing, it is well settled that the Board has continuing jurisdiction over its cases, and the Board retains jurisdiction to reopen or rehear a claim at the request of any party in interest (*see* Workers' Compensation Law § 123; 12 NYCRR 300.14 [a]; *Matter of Hung Nguyen v CVS RX Servs., Inc.*, 217 AD3d 1024, 1026 [3d Dept 2023]). The Board's

¹ Inasmuch as claimant only appealed from the November 2022 decision denying his application for reconsideration and/or full Board review, and not the underlying August 2022 decision of the Board disallowing the claim, the merits of the Board's August 2022 decision are not properly before us (*see Matter of Petre v Allied Devices Corp.*, 213 AD3d 1117, 1117 [3d Dept 2023]; *Matter of Singletary v Schiavone Constr. Co.*, 174 AD3d 1240, 1241 [3d Dept 2019]).

regulations provide that an application for reopening or rehearing "must indicate that: (1) certain material evidence not available for presentation before the [B]oard at the time of hearing is now available; or (2) proof of a change in condition material to the issue is involved; or (3) it would be in the interest of justice" (12 NYCRR 300.14 [a]; *see Matter of Hung Nguyen v CVS RX Servs., Inc.*, 217 AD3d at 1026; *Matter of Mitchell v Wastequip, Inc.*, 203 AD3d 1288, 1291 [3d Dept 2022], *lv dismissed* 39 NY3d 971 [2022]). "Although there is no statutorily-prescribed time period in which an applicant may seek rehearing or reopening of a claim, the 'application must be made within a reasonable time after the applicant has had knowledge of the facts constituting the grounds upon which such application is made' " (*Matter of Mitchell v Wastequip, Inc.*, 203 AD3d at 1290 [internal quotation marks, brackets and citation omitted], quoting 12 NYCRR 300.14 [b]; *see Matter of Gillard v Consolidated Edison of N.Y., Inc.*, 115 AD3d 1121, 1122 [3d Dept 2014]). As relevant here, an application based upon allegations of newly discovered evidence "must be substantiated by supporting affidavits" (12 NYCRR 300.14 [b]).

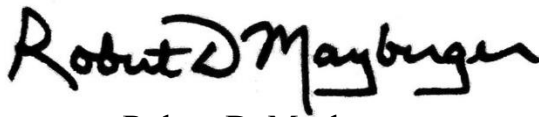
In support of his request for reopening/rehearing, claimant submitted an October 10, 2022 letter from Carolyn Zyloney, his treating neurologist, who attempted to clarify her prior testimony by explaining that it was now her opinion that "the warehouse environment in which [claimant] worked when he first reported work-related stressors were triggers for the onset of migraines and related symptoms." Zyloney, however, previously testified that she could not definitively identify the cause of claimant's migraines or headache disorder. Inasmuch as this letter was not previously considered by the Board (*see* 12 NYCRR 300.14 [a] [1]), it was required under the Board's regulations to be accompanied by a sworn supporting affidavit (*see* 12 NYCRR 300.14 [b]). Given the absence of such, coupled with Zyloney's attempt to modify her prior testimony without any explanation for doing so, we discern no abuse of discretion in the Board's rejection of the unsworn letter and denial of claimant's application for reopening or rehearing (*see* 12 NYCRR 300.14 [a], [b]; *Matter of Hung Nguyen v CVS RX Servs., Inc.*, 217 AD3d at 1026-1027; *Matter of Cush v Tully Constr. Co. Inc.*, 217 AD3d 1017, 1021 [3d Dept 2023]). Finally, inasmuch as claimant's application for reconsideration and/or full Board review was also predicated upon Zyloney's desire to "provide further explanation of her sworn testimony" following the Board's disallowance of the claim, we discern no abuse of discretion in the Board's denial of that application, as claimant failed to demonstrate that newly discovered evidence exists, that there had been a material change in condition, or that the Board improperly failed to consider the issues before it (*see Matter of Sheodial v Universal Constr. Resources Inc.*, 246 AD3d 1214, 1215 [3d

Dept 2026]; *Matter of Karam v Rensselaer County Sheriff's Dept.*, 167 AD3d 1108, 1111 [3d Dept 2018], *lv denied* 33 NY3d 901 [2019]).

Clark, J.P., McShan, Powers and Ryba, JJ., concur.

ORDERED that the decisions are 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 a stylized "D".

Robert D. Mayberger
Clerk of the Court