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

Decided and Entered: November 25, 2026 CV-25-0891

In the Matter of the Claim of
GONZALO CURBELO,
Respondent,
v

NEPTUNE MECHANICAL INC. (MONADNOCK CONSTRUCTION INC.) et al.,
Appellants.

WORKERS' COMPENSATION BOARD,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: October 15, 2026

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

Goldberg Segalla, Rochester (*Bradford J. Reid* of counsel), for appellants.

Polsky, Shouldice & Rosen, Rockville Centre (*Patrick M. Conroy* of counsel), for Gonzalo Curbelo, respondent.

Letitia James, Attorney General, New York City (*Donya Fernandez* of counsel), for Workers' Compensation Board, respondent.

Reynolds Fitzgerald, J.

Appeal from a decision of the Workers' Compensation Board, filed May 2, 2025, which ruled, among other things, that claimant sustained causally related injuries to his neck, back, right shoulder, right elbow, right wrist, right hand and right knee, and postconcussion syndrome.

In January 2024, claimant, a foreperson for a construction company, filed a claim for workers' compensation benefits, alleging that he injured his head, neck, back, right shoulder, right wrist, right hand and right knee during a July 26, 2023 incident, when a crane, positioned on top of the building in which he was working, caught fire and collapsed through the ceiling. The employer opposed the claim, citing, among other things, untimely notice. Following a hearing, a Workers' Compensation Law Judge found that claimant had provided timely notice and established the claim. The Workers' Compensation Board affirmed, and the employer and its workers' compensation carrier (hereinafter collectively referred to as the employer) appeal.

We affirm. Initially, we reject the employer's argument that claimant failed to provide timely written notice of his injury pursuant to Workers' Compensation Law § 18. The Board credited claimant's testimony that, immediately following the collapse, he informed his supervisor that everyone in his crew was safe and that he had been injured by falling rocks and debris. Claimant did not miss any time from work, but he did seek medical attention a week later and, on August 22, 2023, texted his supervisor that he had herniated discs in his back and neck and required emergency surgery.[1] Deferring to the Board's credibility determinations, and inasmuch as the "resolution of the sufficiency of a claimant's oral notice is a matter within the exclusive province of the Board," its determination that claimant's oral notice was sufficient is supported by substantial evidence (*Matter of Pilacik v JACSA, LLC*, 161 AD3d 1463, 1464 [3d Dept 2018]; *see Matter of Galdon v Robert Basil Inc.*, 213 AD3d 1063, 1064 [3d Dept 2023]; *Matter of Rankin v Half Hollow Hills Cent. Sch. Dist.*, 105 AD3d 1242, 1242-1243 [3d Dept 2013]). Moreover, we agree with the Board that the employer was not prejudiced by a failure to provide timely written notice as it is undisputed that the employer was aware of the crane accident. Furthermore, claimant's medical records, beginning with his first medical visit after the accident, were available for review by the employer's medical expert. Therefore, the Board's determination that the employer was not prejudiced by the

[1] It does not appear that claimant ever had surgery.

lack of timely written notice so as to prevent a proper investigation of the claim is plainly supported by substantial evidence (*see Matter of McElroy v Siena Coll.*, 201 AD3d 1090, 1091 [3d Dept 2022]; *Matter of Leduc v Northeastern Clinton CSD*, 197 AD3d 1373, 1375 [3d Dept 2021]).

Finally, contrary to the employer's argument, substantial evidence supports that there was a causal connection or relationship between claimant's employment and the claimed disability. Claimant's treating physician opined that claimant's injuries were causally related to the crane accident. An orthopedic surgeon, who examined claimant and reviewed his medical records on behalf of the employer, similarly opined that claimant had causally related injuries to his neck, back, right shoulder, right wrist, right elbow and right hand. Although this physician further opined that claimant's right knee injury was not causally related to the crane accident, "[t]he Board is vested with the authority to weigh conflicting medical evidence and to credit the opinion of one medical expert over another, and is free to accept or reject portions of a medical expert's opinion" (*Matter of Ayars v Navillus Tile Co.*, 246 AD3d 1205, 1206 [3d Dept 2026] [internal quotation marks and citations omitted]; *see Matter of Balseca v Hudson Concrete Inc.*, 238 AD3d 1415, 1417 [3d Dept 2025]; *see also Matter of Herrera v Tempo Carpentry LLC*, 242 AD3d 1285, 1288 [3d Dept 2025]).

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

ORDERED that the decision is affirmed, without costs.

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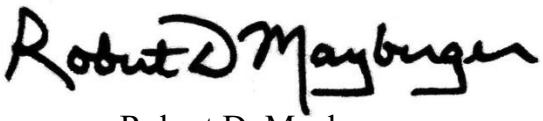

Robert D. Mayberger
Clerk of the Court