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

Decided and Entered: November 19, 2026 CV-25-0971

In the Matter of the Claim of
MOUMINI DOUMBIA,
Appellant,
v

NEW YORK BLACK CAR OPERATORS,
Respondent.

WORKERS' COMPENSATION BOARD,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: October 20, 2026

Before: Garry, P.J., Aarons, Fisher, McShan and Corcoran, JJ.

Ugalde & Rzonca, LLP, Rego Park (*John F. Clennan*, Ronkonkoma, of counsel), for appellant.

Weiss, Wexler & Wornow, PC, New York City (*J. Evan Perigoe* of counsel), for New York Black Car Operators, respondent.

Corcoran, J.

Appeal from a decision of the Workers' Compensation Board, filed January 2, 2025, which, among other things, precluded claimant's evidence of schedule loss of use.

In 2022, claimant, an "Uber driver," filed a claim for workers' compensation benefits alleging that he sustained work-related injuries in December 2021 as a result of a motor vehicle accident. The claim was established for injuries to the neck, back, left shoulder and left foot. In May 2023, Robert Hecht, an orthopedic surgeon who examined claimant on April 28, 2023, filed a C-4.3 form (Doctor's Report of MMI/Permanent Partial Impairment) and found therein that claimant's injuries to his left shoulder and left foot had reached maximum medical improvement and were permanent[1] and that claimant had sustained a 15% schedule loss of use (hereinafter SLU) of the left arm (shoulder) and a 12.5% SLU of the left foot (ankle). In September 2023, Richard Semble, an orthopedic surgeon, performed an independent medical examination (hereinafter IME) of claimant; he found no deficits in range of motion and negative testing results for the left shoulder and left ankle/foot and diagnosed resolved sprains of both sites, with each having a 0% SLU. A hearing ensued in January 2024, after which a Workers' Compensation Law Judge (hereinafter WCLJ) found that Hecht's permanency report constituted an IME and therefore precluded that report because it did not comply with the provisions in Workers' Compensation Law § 137 governing IMEs. The WCLJ also credited Semble's findings relative to permanent impairment and denied claimant's request to cross-examine Semble, after the WCLJ precluded Hecht's permanency report and ruled on the merits. Upon administrative appeal, the Workers' Compensation Board affirmed, finding that the examination by Hecht constituted an IME and precluded the ensuing permanency report because it did not comply with the statutory provisions governing IMEs. The Board also found that claimant's request to cross-examine Semble was properly denied as untimely. Claimant appeals.

We affirm. Claimant's assertion that Hecht should not be considered an independent medical examiner is without merit. An "[a]ttending physician or other attending practitioner" is defined as the "provider[ ] or practitioner[ ] who ha[s] primary responsibility for treating the claimant for the injury or illness for which such claimant is being examined" (12 NYCRR 300.2 [b] [1]; *accord Matter of Harris v Department of Envtl. Protection*, 217 AD3d 1034, 1035 [3d Dept 2023]; *Matter of Estanluards v American Museum of Natural History*, 53 AD3d 991, 992 [3d Dept 2008]). A physician may be considered to be an independent medical examiner if the physician examines a claimant only for the purpose of evaluating or providing an opinion with respect to, among other things, claimant's degree of disability, maximum medical improvement, permanency and/or SLU (*see* 12 NYCRR 300.2 [b] [4]; [5]; *Matter of Esposito v Tutor*

[1] Hecht indicated no permanent impairment of the cervical and lumbar spine.

Perini Corp., 158 AD3d 912, 913 [3d Dept 2018], *lv denied* 31 NY3d 906 [2018]; *Matter of Estanluards v American Museum of Natural History*, 53 AD3d at 992).

A review of the record reveals that, when Hecht examined claimant on April 28, 2023, Hecht did not treat him for his injuries, and Hecht's examination and subsequent May 2023 report were for the purpose of, and limited to, determining whether claimant's injuries had reached maximum medical improvement and claimant's SLU. Therefore, the April 28 examination constituted an IME (*see* 12 NYCRR 300.2 [b] [4]; *Matter of Belmonte v Snashall*, 2 NY3d 560, 563 n 1 [2004]). Claimant argues that Hecht was his attending physician, and not an independent medical examiner, because Hecht provided treatment to him during the first two examinations on March 31, 2023 and April 14, 2023, but the only treatment that Hecht provided was, as the Board found, advice for "physical therapy and proper care" without a referral, a prescription, a treatment plan or any indication of duration. Given the foregoing, substantial evidence supports the Board's determination that Hecht's April 28 examination constituted an IME and that Hecht acted as an independent medical examiner on behalf of claimant (*see* Workers' Compensation Law §§ 123, 137 [9]; 12 NYCRR 300.2 [b] [4], [5]; *Matter of Harris v Department of Envtl. Protection*, 217 AD3d at 1035-1036; *Matter of Esposito v Tutor Perini Corp.*, 158 AD3d at 913; *Matter of Estanluards v American Museum of Natural History*, 53 AD3d at 992). Accordingly, Hecht was required, pursuant to Workers' Compensation Law § 137 (1), to submit any IME reports on the same day and in the same manner to, among others, the Board and to certify his report (*see* Workers' Compensation Law § 13-a [4] [e] [i]; 12 NYCRR 300.2 [d] [4] [iii]). Inasmuch as there has been no demonstration of compliance, substantial or otherwise, with the applicable statutory and regulatory requirements, which claimant does not dispute, the Board properly precluded the May 2023 IME report of Hecht (*see* Workers' Compensation Law § 137 [1]; 12 NYCRR 300.2 [b] [4]; [d]; *Matter of Harris v Department of Envtl. Protection*, 217 AD3d at 1036; *Matter of Perez v SN Gold Corp.*, 155 AD3d 1298, 1299-1300 [3d Dept 2017]; *Matter of Estanluards v American Museum of Natural History*, 53 AD3d at 992). Finally, we discern no error or abuse of discretion in the Board's determination that claimant effectively waived any request to cross-examine Semble by failing to make a timely request at the hearing prior to the WCLJ's ruling on the merits (*compare Matter of Ferguson v Eallonardo Construction, Inc.*, 173 AD3d 1592, 1594-1595 [3d Dept 2019], *with Matter of Lazalee v Wegman's Food Mkts., Inc.*, 40 NY3d 458, 461-462 [2023]).

Garry, P.J., Aarons, Fisher and McShan, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court