

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

Decided and Entered: March 26, 2026

CV-24-1227

In the Matter of the Claim of
ANDREW MURAD,
Appellant,

v

TRI-STATE GROUNDWATER
SOLUTIONS, LLC, et al.,
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: February 11, 2026

Before: Garry, P.J., Aarons, Ceresia, Fisher and Mackey, JJ.

The Perecman Firm, PLLC, New York City (*Edward W. Guldi* of counsel), for appellant.

Chartwell Law, New York City (*Marissa J. Huber* of counsel), for Tri-State Groundwater Solutions, LLC and another, respondents.

Cherry, Edson & Kelly, LLP, Melville (*David W. Faber* of counsel), for MLJ Contracting Corp. and another, respondents.

Santacrose, Frary & Whiting, Buffalo (*Shannon L. Spencer* of counsel), for Halmar International, Inc. and another, respondents.

David F. Wertheim, State Insurance Fund, Albany (*Gabriel Colon* of counsel), for State Insurance Fund, respondent.

Gerber Ciano Kelly Brady LLP, Buffalo (*Stanley L. Evans* of counsel), for Pristine Services, Inc. and another, respondents.

Goldberg Segalla, Rochester (*Bradford J. Reid* of counsel), for Starr Indemnity & Liability, respondent.

Vecchione, Vecchione & Cano, LLP, Garden City Park (*Michael F. Vecchione* of counsel), for Ferreira Construction Co., Inc. and another, respondents.

Garry, P.J.

Appeal from a decision of the Workers' Compensation Board, filed June 10, 2024, which disallowed claimant's claim for workers' compensation benefits.

Claimant, a union member who worked as a maintenance foreperson and as a heavy equipment mechanic for various companies over the years, applied for workers' compensation benefits in 2021 and claimed that he had sustained an occupational disease due to osteoarthritis in his knees worsened by work-related repetitive movement. Following the taking of deposition testimony from two physicians who had treated or examined claimant and hearings at which claimant and others testified, a Workers' Compensation Law Judge disallowed the claim upon finding that claimant's treating physician had not credibly testified to the requisite link between claimant's knee problems and his work. Upon administrative review, the Workers' Compensation Board affirmed. Claimant appeals.

We affirm. "To establish an occupational disease, the claimant must demonstrate a recognizable link between his or her condition and a distinctive feature of his or her employment, and the Board's decision as to whether to classify a certain medical condition as an occupational disease is a factual determination that will not be disturbed if supported by substantial evidence, even where there is record evidence that could support a contrary result" (*Matter of Morgan v Kinray, Inc.*, 226 AD3d 1288, 1289-1290 [3d Dept 2024] [internal quotation marks and citations omitted]; see *Matter of Kretunski v Citywide Env'tl. Servs. LLC*, 233 AD3d 1218, 1218-1219 [3d Dept 2024]). Where, as here, "medical proof is relied upon to demonstrate the existence of a causal relationship, it must signify a probability of the underlying cause that is supported by a rational basis

and not be based upon a general expression of possibility" (*Matter of Lichten v New York City Tr. Auth.*, 132 AD3d 1219, 1219 [3d Dept 2015]; see *Matter of Sanchez v New York City Tr. Auth.*, 206 AD3d 1428, 1429 [3d Dept 2022]).


Claimant's treating physician, orthopedic surgeon Omid Barzideh, consistently failed to render a definitive opinion that claimant's arthritic knees were connected to his work activities. Barzideh only suggested that such a link was "possible" in a November 2021 report. When asked during a later deposition if a causal relationship existed between claimant's knee condition and his work activities, Barzideh could only reply "yes and no" and offer claimant's work as one of a number of possible explanations. In fact, Barzideh admitted that he "d[id no]t know what the cause of [claimant's] arthritis" was and that the deterioration of that condition could have resulted from a variety of things other than work, including claimant's age, physical condition and a fall and separate twisting injury sustained in 2021 that the record gave no reason to believe were work related. Barzideh also failed to explain what work activities he believed had exacerbated claimant's condition, testifying that he was "not exactly sure" what claimant's work as a "[h]eavy vehicle mechanic" involved and did not believe that he had been given a list of claimant's specific work duties. The Board was free to, and did, "reject as inadequate [this] less-than-compelling medical evidence submitted by claimant" (*Matter of Glowczynski v Suburban Restoration Co., Inc.*, 174 AD3d 1236, 1238 [3d Dept 2019] [internal quotation marks and citations omitted]; see *Matter of Bonet v New York City Tr. Auth.*, 205 AD3d 1287, 1288-1289 [3d Dept 2022]).

The Board noted that the other medical evidence in the record offered no support for a connection between claimant's work and his condition. Indeed, the Board pointed out that Mark Harper, an orthopedic surgeon who had reviewed Barzideh's notes and other medical records and examined claimant himself in October 2022, specifically opined that the degenerative joint disease in claimant's knees was *not* causally-related to his work and that the available information only permitted speculation as to whether work exacerbated that condition. Thus, in the absence of credible medical evidence establishing a recognizable link between claimant's knee condition and his work, "substantial evidence supports the Board's determination that claimant did not establish that [he] sustained a causally-related occupational disease" (*Matter of Sanchez v New York City Tr. Auth.*, 206 AD3d at 1430; see *Matter of Bonet v New York City Tr. Auth.*, 205 AD3d at 1288-1289; *Matter of Simpson v New York City Tr. Auth.*, 151 AD3d 1160, 1161-1162 [3d Dept 2017]). Claimant's remaining contentions have been examined and are lacking in merit.

Aarons, Ceresia, Fisher and Mackey, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court