

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

Decided and Entered: October 15, 2026

CV-25-0352

In the Matter of the Claim of JOSE
RENDON,
Respondent,
v

COSAN CONSTRUCTION CORP.
et al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: September 10, 2026

Before: Aarons, J.P., Reynolds Fitzgerald, Fisher, Powers and Mackey, JJ.

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

The Garcia Law Firm, New York City (*Kenneth J. Gorman*, New York City, of counsel), for Jose Rendon, 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 January 29, 2025, which, among other things, amended the claim to include injuries to claimant's neck, back, left shoulder, left ankle and bilateral knees.

In June 2023, claimant was found wedged in a narrow gap between two buildings at the construction site where he was employed as a laborer. According to claimant, he fell three stories through the gap after a suspended scaffold he was using as a "bridge" to access the third floor of one of the buildings shifted. Claimant explained that he landed on insulation at ground level and "rebounded" before losing consciousness. First responders had to cut through the walls of one of the buildings to rescue him. Claimant sought workers' compensation benefits arising out of injuries he allegedly sustained in the accident. A Workers' Compensation Law Judge (hereinafter WCLJ) established the claim for a work-related injury to claimant's left thigh, found that prima facie medical evidence existed for other injuries and continued the case for further proceedings. Following several medical examinations of claimant, as well as a hearing where claimant and a site superintendent who was present in the aftermath of the accident testified, the WCLJ determined, among other things, that claimant had also suffered injuries to his neck, back, left shoulder, left ankle and both knees in the accident and amended the claim accordingly. The employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) administratively appealed, questioning claimant's description of the accident as well as the causal relationship between the accident and his further injuries, and sought to submit new evidence that purportedly called into question aspects of his account. The Workers' Compensation Board declined to consider the new evidence and affirmed. The carrier appeals, and we now affirm.

Initially, the Board properly refused to consider photographs of the scaffold at issue and a bilingual warning sign, as well as a scaffold inspection report, that were first submitted in support of the carrier's administrative appeal. An appealing party who "seeks to introduce additional documentary evidence in [an] administrative appeal that was not presented before the [WCLJ] . . . must submit a sworn affidavit, setting forth the evidence, and explaining why it could not have been presented before the [WCLJ]" (12 NYCRR 300.13 [b] [1] [iii]; see *Matter of Rios v Rockaway Contr. Corp.*, 213 AD3d 1061, 1063 [3d Dept 2023]). Although the affirmation submitted by the carrier argued that the new evidence rebutted aspects of claimant's hearing testimony, the carrier was aware of claimant's account of how the accident occurred and did not seek an opportunity to present rebuttal evidence at the hearing after he provided more details in his testimony.

Nor did the carrier offer any explanation as to why the "new" evidence was unavailable at the time of the hearing. As the carrier "failed to explain why this evidence could not have been presented before the WCLJ[,] . . . we discern no abuse of discretion in the Board's refusal to consider it" (*Matter of Rios v Rockaway Contr. Corp.*, 213 AD3d at 1063; *see Matter of Belfiore v Penske Logistics LLC*, 203 AD3d 1431, 1434 [3d Dept 2022]; *Matter of Hernandez v KNS Bldg. Restoration, Inc.*, 180 AD3d 1129, 1132 [3d Dept 2020]).

As for the additional injury sites established, "[t]he Board is empowered to determine the factual issue of whether a causal relationship exists based upon the record, and its determination will not be disturbed when supported by substantial evidence" (*Matter of Blanch v Delta Air Lines*, 204 AD3d 1203, 1204-1205 [3d Dept 2022] [internal quotation marks and citations omitted]; *accord Matter of Kennedy v 3rd Track Constructors*, 213 AD3d 1005, 1006 [3d Dept 2023]). "To that end, claimant bore the burden of establishing, by competent medical evidence, the existence of a causal connection between his injury and his employment" (*Matter of Kennedy v 3rd Track Constructors*, 213 AD3d at 1006 [internal quotation marks, ellipses and citations omitted]). Although the carrier questioned claimant's description of the accident despite the claim having previously been established for other injuries, the Board credited claimant's testimony, which was supported by the undisputed fact that he was found wedged in the bottom of the gap between the buildings, that "a work-related accident involving a fall from a height" had occurred.¹ The Board further credited competent medical evidence in the form of detailed reports authored by three physicians – two of whom were orthopedic surgeons who examined claimant at the carrier's request and all of whom relied upon claimant's account of what occurred – that his three-story fall was the cause of his neck, back, left shoulder, left ankle and bilateral knee injuries. We accord deference to those assessments of credibility and are satisfied, notwithstanding proof in the record that might support a different result, that the foregoing constitutes substantial evidence for "the Board's ruling that the accident occurred [as described] and that claimant's injuries arose out of and in the course of his employment" (*Matter of Duta-Zumba v Urban Atelier Group, LLC*, 242 AD3d 1264, 1265 [3d Dept 2025]; *see Matter of Leon v Monadnock Constr. Inc.*, 208 AD3d 1415, 1416-1417 [3d Dept 2022]; *Matter*

¹ The carrier suggested that a fall could not have occurred because the gap between the buildings was measured to be 8½ inches wide at one point and a hard hat like the one claimant wore was "typically" the same width, but the record lacks any indication that the gap was consistently that width and claimant obviously could fit in it at ground level since he was found there.

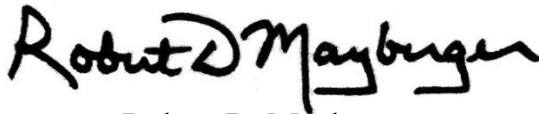
of Vasquez v Northstar Constr. Group Servs. Inc., 205 AD3d 1250, 1252-1253 [3d Dept 2022]).

The carrier's remaining contentions, including that the Board applied an incorrect legal standard and made inadequate factual findings to explain its decision, have been examined and rejected as wholly lacking in merit.

Aarons, J.P., Fisher, Powers and Mackey, JJ., concur.

ORDERED that the decision is 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".

Robert D. Mayberger
Clerk of the Court