

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 28, 2015

519259

In the Matter of the Claim of
STEPHEN LARBERG,
Appellant,



v

SUFFOLK COUNTY POLICE DEPARTMENT
et al.,

MEMORANDUM AND ORDER

Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: April 27, 2015

Before: McCarthy, J.P., Lynch, Devine and Clark, JJ.

Stephen Larberg, South Farmingdale, appellant pro se.

Cherry, Edson & Kelly, LLP, Carle Place (David W. Faber of counsel), for Suffolk County Police Department and another, respondents.

McCarthy, J.P.

Appeal from a decision of the Workers' Compensation Board, filed May 28, 2014, which denied claimant's request for reconsideration and/or full Board review.

Claimant alleged that he suffers from work-related heart disease and, in 2008, the Workers' Compensation Board determined that his claim for workers' compensation benefits had properly been closed for lack of prima facie medical evidence. In 2013, he applied for reconsideration and/or full Board review. The

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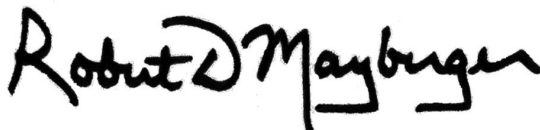
Board denied his application, and claimant now appeals.

We affirm. Inasmuch as claimant has only appealed from the Board's denial of his request for full Board review, the merits of the underlying decision are not before us (see Matter of Kalkbrenner v Accord Corp., 123 AD3d 1303, 1304 [2014]; Matter of Mazzaferro v Fast Track Structures, Inc., 106 AD3d 1302, 1302 [2013]). Instead, the sole issue for our consideration is whether the denial of full Board review "was arbitrary and capricious or otherwise constituted an abuse of discretion" (Matter of Kalkbrenner v Accord Corp., 123 AD3d at 1304). The decision here was neither, as claimant failed to "show that newly discovered evidence exists, that there has been a material change in condition, or that the Board improperly failed to consider the issues raised in the application for review in making its initial determination" (Matter of D'Errico v New York City Dept. of Corrections, 65 AD3d 795, 796 [2009], appeal dismissed 13 NY3d 899 [2009]; accord Matter of Regan v City of Hornell Police Dept., 124 AD3d 994, 997 [2015]).

Lynch, Devine and Clark, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court