

Decided and Entered: December 13, 2012

514891

In the Matter of the Claim of
JASON GIUDI,
Respondent,

v

NEW PALTZ FIRE DEPARTMENT,
Appellant.

WORKERS' COMPENSATION BOARD,
Respondent.

AFFIRMED Board's ruling that claimant's condition has not improved with time.

MEMORANDUM AND ORDER

Calendar Date: November 15, 2012

Before: Mercure, J.P., Rose, Kavanagh, Stein and Egan Jr., JJ.

Ryan, Roach & Ryan, LLP, Kingston (Jacqueline L. Heubach of counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York City (Marjorie S. Leff of counsel) for Workers' Compensation Board, respondent.

Rose, J.

Appeal from a decision of the Workers' Compensation Board, filed September 30, 2011, which ruled that claimant had not sustained a change in condition and continued his award of benefits under the Volunteer Firefighters' Benefit Law.

Claimant, a chef and military police officer, suffered a head injury in the course of his duties as a volunteer firefighter. The Workers' Compensation Board eventually found that he was permanently disabled and had been deprived of more

than 75% of his earning capacity, and accordingly awarded him benefits pursuant to Volunteer Firefighters' Benefit Law § 10 (1). Several years later, the claim was reopened to address the employer's contention that claimant's condition had changed (see Volunteer Firefighters' Benefit Law § 13). The Board disagreed, and the employer now appeals.

Substantial evidence supports the Board's finding that claimant remains unable "to continue performing either the employment duties usually and ordinarily performed at the time of injury or those required by a reasonable substitute," and we accordingly affirm (Matter of Doesburg v Village of Stillwater, 11 AD3d 762, 763 [2004]; accord Matter of Weinstein v Somers Fire Dist., 37 AD3d 917, 918 [2007]). Claimant testified that his work as a chef required substantial amounts of education and training, and he has been forced to perform less mentally demanding work since his injury. Indeed, a clinical neuropsychologist who examined claimant opined that his cognitive impairments continued to prevent him from working as a chef or military police officer. The Board was free to credit this evidence, which provided ample justification for its finding that claimant continues to suffer from a disability that deprives him of more than 75% of his earning capacity (see Matter of Allen v Brentwood Fire Dist., 1 AD3d 657, 658 [2003]; Matter of Dentico v Village of Walworth, 254 AD2d 515, 515-516 [1998]; Matter of Halbin v Lindenhurst Fire Dept. of Inc. Vil. of Lindenhurst, 39 AD2d 991, 992 [1972]).

We have considered and rejected the employer's additional contention that the Board applied an incorrect legal standard in assessing the evidence before it.

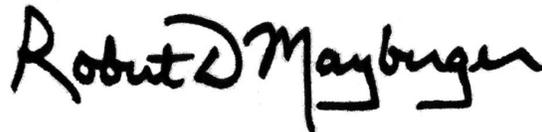
Mercure, J.P., Kavanagh, Stein and Egan Jr., JJ., concur.

-3-

514891

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