

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 5, 2012

512899

In the Matter of the Claim of
SAM NASSAR,
Respondent,

v

MASRI FURNITURE & MERCHANDISE,
INC.,
Appellant.

WORKERS' COMPENSATION BOARD,
Respondent.

AFFIRMED Board's rulings that (1) claimant was an employee and (2) injury was work-related.

MEMORANDUM AND ORDER

Calendar Date: November 17, 2011

Before: Peters, J.P., Malone Jr., Stein, Garry and Egan Jr., JJ.

Shanker Law Firm, P.C., New York City (Steven J. Shanker of counsel), for appellant.

Law Office of Joseph A. Romano, New York City (Mark Du of counsel), for Sam Nassar, respondent.

Eric T. Schneiderman, Attorney General, New York City (Iris A. Steel of counsel), for Workers' Compensation Board, respondent.

Stein, J.

Appeals from two decisions of the Workers' Compensation Board, filed June 25, 2008 and December 8, 2010, which, among other things, ruled that claimant sustained a causally related injury and awarded workers' compensation benefits.

Claimant worked for a furniture company (hereinafter the employer) monitoring stock in the warehouse and making deliveries. In April 2005, while he was lifting furniture from a container, he injured his back and neck. The pain continued to worsen. Approximately two weeks later, while claimant was unloading furniture from more containers, the pain was such that he was unable to continue working. He did not return to work thereafter and subsequently filed a claim for workers' compensation benefits. Following extended proceedings before various Workers' Compensation Law Judges as well as the Workers' Compensation Board, the Board ultimately ruled that claimant sustained a causally related injury and awarded him benefits. The employer appeals.

We reject the employer's contention that the record does not contain substantial evidence establishing that claimant's injury was causally related to his employment. A number of witnesses testified that claimant worked for the employer during the time period in question. Moreover, both claimant and a coworker with whom he was working at the time he was injured testified that claimant was working for the employer lifting furniture when he hurt his back and neck. Claimant and the coworker further stated that the pain continued thereafter, requiring claimant to cease working. Any inconsistencies in the testimony or contrary testimony given by the employer presented a credibility issue for the Board to resolve (see Matter of Klamka v Consolidated Edison Co. of N.Y., Inc., 84 AD3d 1527, 1528 [2011]; Matter of Conyers v Van Rensselaer Manor, 80 AD3d 914, 916 [2011]), and it was not bound by the findings of the Workers' Compensation Law Judge (see Matter of Jones v New York State Dept. of Correction, 35 AD3d 1025, 1025 [2006]; Matter of Lewis v Cambridge Filter Corp., 132 AD2d 802, 803 [1987], lv dismissed 70 NY2d 871 [1987], lv denied 71 NY2d 805 [1988]). Furthermore, uncontradicted medical evidence was presented establishing a causal relationship between the injury that claimant sustained while lifting furniture at the employer's premises and the disability to his back and neck. Therefore, we find no reason to disturb the Board's decisions.

Peters, J.P., Malone Jr., Garry and Egan Jr., JJ., concur.

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ORDERED that the decisions are affirmed, with costs to claimant.

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