

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 5, 2012

512852

In the Matter of the Claim of
COSIMO SATALINO,
Appellant,

AFFIRMED the Board's ruling that there was no causally related occupational disease.

v

DAN'S SUPREME SUPERMARKET
et al.,
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: November 22, 2011

Before: Spain, J.P., Malone Jr., Stein, McCarthy and
Egan Jr., JJ.

John F. Clennan, Ronkonkoma, for appellant.

Fisher Brothers, New York City (Elissa Landa of counsel),
for Dan's Supreme Supermarket and another, respondents.

Spain, J.P.

Appeal from a decision of the Workers' Compensation Board, filed December 7, 2010, which ruled, among other things, that claimant did not suffer a causally related disability and denied his claim for workers' compensation benefits.

Claimant worked for a grocery store for 35 years. His job duties included unloading delivery trucks, stacking boxes and stocking store shelves. In January 2009, claimant had the first of two surgeries on his lumbar spine and never returned to work.

Claimant filed a claim for workers' compensation benefits in November 2009, alleging that his condition was causally related to his employment. Following hearings, a Workers' Compensation Law Judge determined that claimant had suffered an occupational disease to his lumbar spine and awarded him benefits. On review, the Workers' Compensation Board reversed that decision and disallowed the claim. Claimant now appeals.

We affirm. Pursuant to the Workers' Compensation Law, an occupational disease is "a disease resulting from the nature of employment and contracted therein" (Workers' Compensation Law § 2 [15]). Further, to be entitled to benefits based upon an occupational disease, "the claimant must establish a recognizable link between his or her condition and a distinctive feature of his or her employment" (Matter of Ferraina v Ontario Honda, 32 AD3d 643, 644 [2006]; see Matter of Lumia v City of N.Y., Off. of Queens Borough President, 21 AD3d 600, 601 [2005]). Finally, medical opinions regarding a causal relationship "must signify 'a probability as to the underlying cause' of the claimant's injury which is supported by a rational basis" (Matter of Mayette v Village of Massena Fire Dept., 49 AD3d 920, 922 [2008], quoting Matter of Paradise v Goulds Pump, 13 AD3d 764, 765 [2004]).

Here, claimant presented the medical reports and testimony of two of his treating physicians. Stephen Burstein, a neurological surgeon who began treating claimant in 2008, diagnosed claimant as suffering from disc herniation, arthritis, spondylolisthesis and stenosis. Burstein, however, testified that he could not find a relationship between claimant's condition and his employment. While he testified that the disc herniations could have been caused by heavy lifting, he could not opine whether the herniations were related to claimant's work or chronic disc degeneration. He also testified that claimant's arthritis, stenosis and spondylolisthesis could be related to claimant's age and not his job. Artem Vaynman, the neurological surgeon who performed two surgeries on claimant, testified that claimant's disc degeneration resulted from both natural degeneration and his job duties. He opined that years of heavy lifting had accelerated his degenerative condition. Vaynman, however, had initially indicated in an application for disability benefits that claimant's condition was unrelated to his

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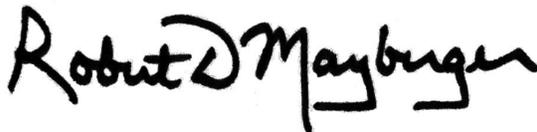
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employment. He testified that, although the community of spinal surgeons generally believes that repetitive lifting could injure the spine, in his opinion there is no scientific evidence supporting that conclusion. Noting that the Board is free to reject medical opinions where an expert does not testify convincingly in support of a causal relationship, we conclude that the Board did not abuse its discretion in determining that claimant failed to establish a recognizable link between his condition and his employment (see Matter of Mayette v Village of Massena Fire Dept., 49 AD3d at 922; Matter of Castro v Tishman Speyer Props., 303 AD2d 790, 791 [2003]).

Malone Jr., Stein, McCarthy and Egan Jr., 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