

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 30, 2014

515325

AFFIRMED Board's decision that claimant sustained an injury.

In the Matter of the Claim of
DAVID BROWN,
Respondent,
v

PENGUIN AIR CONDITIONING
et al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: January 10, 2014

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

Weiss, Wexler & Wornow, PC, New York City (Lauren M. Bilasz of counsel), for appellants.

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

Stein, J.

Appeal from a decision of the Workers' Compensation Board, filed November 23, 2011, which, among other things, ruled that claimant sustained a compensable injury.

Claimant, an operating engineer, was allegedly injured at work when he removed a heavy piece of air conditioning equipment from a ceiling and carried it down a ladder. His ensuing claim for workers' compensation benefits was controverted. The

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Workers' Compensation Board ultimately found claimant's account of the accident to be credible and, relying upon the opinions of two physicians who had examined claimant, established the claim for a neck and back injury. The employer and its workers' compensation carrier (hereinafter collectively referred to as the employer) now appeal.

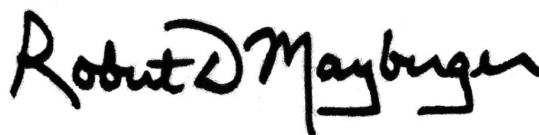
We affirm. We disagree with the employer's contention that the opinions of the two physicians who found claimant to have suffered work-related injuries were overly speculative. The physicians who offered those opinions relied, in part, on claimant's account of the accident, which the Board found to be credible. They also examined claimant and reviewed the results of diagnostic tests, as well as other treatment records, in order to determine the origin and extent of his injuries. Particularly given the absence of any medical evidence to the contrary, we conclude that the Board's finding of causally related neck and back injuries is supported by substantial evidence (see Matter of Perez v Mondial Tires, Inc., 104 AD3d 998, 999 [2013]; Matter of Paradise v Goulds Pump, 13 AD3d 764, 765 [2004]).

The employer's remaining contentions, to the extent they are properly before us, have been considered and found to be lacking in merit.

Lahtinen, J.P., McCarthy and Egan Jr., JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court