

Decided and Entered: May 23, 2013

514906

In the Matter of the Claim of
JOHN McCLUSKEY,
Respondent,

AFFIRMED Board's ruling that
claimant did sustain a work-related
accident.

v

CERTIFIED MOVING & STORAGE et
al.,
Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: April 23, 2013

Before: Peters, P.J., Rose, McCarthy and Egan Jr., JJ.

Anne O'Connell Zavelo, New York City, for appellants.

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

Egan Jr., J.

Appeal from a decision of the Workers' Compensation Board,
filed September 29, 2011, which, among other things, ruled that
claimant sustained a work-related back injury.

Claimant, who was employed by a moving and storage company,
filed a workers' compensation claim contending that he had
injured himself while moving a heavy credenza. Following several
hearings and the receipt of medical evidence, a Workers'
Compensation Law Judge found that claimant had sustained a work-

-2-

514906

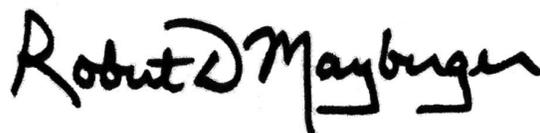
related back injury as the result of an accident that occurred on February 15, 2010. Upon review, the Workers' Compensation Board modified, established the accident date as February 13, 2010 and otherwise affirmed. The employer and its workers' compensation carrier now appeal.

As substantial evidence supports the Board's decision, we affirm. Claimant testified that he injured his back while moving a credenza in February 2010 – an account that was corroborated by several of his coworkers – and physicians who examined and/or treated claimant agreed that, if claimant's version of the events was accurate, his back condition was causally connected to that incident (see Matter of Nassar v Masri Furniture & Mdse., Inc., 91 AD3d 1022, 1022-1023 [2012]; Matter of Klamka v Consolidated Edison Co. of N.Y., Inc., 84 AD3d 1527, 1528 [2011]). Although the employer attempted to call into question the recollection of claimant and his coworkers as to the date upon which the accident occurred, "the precise date of claimant's injury is not dispositive of any of the issues in the case" (Matter of Klamka v Consolidated Edison Co. of N.Y., Inc., 84 AD3d at 1529 [internal quotations marks and citation omitted]). We have examined the employer and carrier's remaining contentions and find them to be without merit.

Peters, P.J., Rose and McCarthy, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court