

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 25, 2013

515682

In the Matter of the Claim of
SCOTT STEUBER,
Appellant,

v

HOME PROPERTIES, INC., et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

AFFIRMED Board's decision that the injury on appeal was not consequential to the original injury

MEMORANDUM AND ORDER

Calendar Date: March 18, 2013

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

Miller & Caggiano, LLP, Bohemia (John F. Clennan of Miller & Caggiano, LLP, Ronkonkoma, of counsel), for appellant.

Fischer Brothers, New York City (Amy Levitt of counsel), for Home Properties, Inc. and another, respondents.

Mercure, J.P.

Appeal from a decision of the Workers' Compensation Board, filed June 4, 2012, which ruled that claimant did not sustain a causally related injury to his thoracic spine and denied his claim for workers' compensation benefits.

Claimant applied for workers' compensation benefits after falling at work in March 2010, and his claim was established for injuries to his back, left knee and left hip. While claimant had degenerative changes throughout his spine, he further injured his lumbar spine as a result of the initial accident. Claimant

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thereafter underwent thoracic spine surgery in 2011, and the employer and its workers' compensation carrier objected to paying for the surgery upon the ground that it was not causally connected to his claim. The Workers' Compensation Board ultimately agreed, and claimant now appeals.

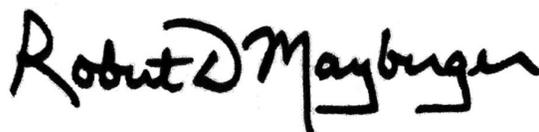
We affirm. There is no dispute that claimant had a degenerative condition in his thoracic spine that did not become symptomatic as a result of the initial accident. While claimant's orthopedic surgeon testified that the condition became symptomatic as a result of later falls that were consequential to claimant's initial accident, an independent medical examiner who evaluated claimant disagreed. Specifically, the examiner not only found claimant's thoracic condition to be unrelated to the compensable accident, but opined that his subsequent falls were not caused by the injuries sustained in that accident. Moreover, claimant's orthopedist admitted that his thoracic condition might have become symptomatic even in the absence of any physical trauma. Thus, the Board credited the examiner's opinion and, deferring to that assessment of credibility, we find substantial evidence in the record to support the determination (see Matter of Franco v Peckham Indus., Inc., 91 AD3d 997, 997-998 [2012], lv denied 18 NY3d 810 [2012]; Matter of Kot v Beth Ameth Home Attendant Serv., 70 AD3d 1114, 1115 [2010]; Matter of Banner v Anheuser-Busch Cos., Inc., 59 AD3d 759, 760 [2009]).

Claimant's remaining contentions have been examined and found to lack merit.

Spain, McCarthy and Egan Jr., JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court