

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 5, 2012

509839

In the Matter of the Claim of  
EDWARD BLOTKO,

Appellant,

v

AFFIRMED the  
claimant was not  
an employee

SOLOMON OLIVER MECHANICAL  
CONTRACTING et al.,  
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,  
Respondent.

Calendar Date: November 22, 2011

Before: Mercure, Acting P.J., Peters, Rose, Lahtinen and  
Garry, JJ.

Leonard B. Feld, Jericho, for appellant.

Weiss, Wexler & Wornow, P.C., New York City (Michael J.  
Reynolds of counsel), for Solomon Oliver Mechanical Contracting  
and another, respondents.

Mercure, Acting P.J.

Appeal from a decision of the Workers' Compensation Board,  
filed September 3, 2009, which ruled that claimant was not an  
employee of Solomon Oliver Mechanical Contracting and denied his  
claim for workers' compensation benefits.

On June 9, 2008, claimant sustained injuries at a building  
that was being demolished by Solomon Oliver Mechanical  
Contracting (hereinafter SOMC), the company that submitted the

winning bid for the job. It is undisputed that claimant had unsuccessfully bid for the demolition job for his own company. After his bid was turned down, claimant spoke with SOMC's owner, Solomon Oliver, about whether some of the laborers who had worked for his company could work at the demolition site. Oliver agreed and claimant dropped off workers at the job site on two mornings prior to his accident. According to claimant, Oliver had also hired him to work at the site as a laborer and he sought workers' compensation benefits as a result. Oliver denied hiring claimant, however, and SOMC's workers' compensation carriers disputed claimant's claim for benefits. A Workers' Compensation Law Judge found that an employer-employee relationship did not exist between claimant and SOMC. Upon review, the Workers' Compensation Board affirmed, prompting this appeal by claimant.

We affirm. "The existence of an employer-employee relationship in a particular case is a factual issue for the Board to resolve and its finding must be upheld if it is supported by substantial evidence" (Matter of Mendoza v Dolgetta, 81 AD3d 1043, 1044 [2011] [internal quotation marks and citation omitted]; see Matter of Duma v Baca, 83 AD3d 1228, 1228 [2011]). Here, there is substantial evidence supporting the Board's conclusion that Oliver did not hire claimant to perform demolition work at the time of the accident. The opposing testimony from claimant and his witnesses created a credibility issue for the Board to resolve (see Matter of Mendoza v Dolgetta, 81 AD3d at 1044). Thus, despite proof in the record that would support a contrary conclusion (see Matter of Lai Pock Lew v Younger, 69 AD3d 1161, 1162 [2010]), we find no basis to disturb the Board's decision that claimant was not SOMC's employee.

Peters, Rose, Lahtinen and Garry, JJ., concur.

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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 style with a large, prominent "R" and "M".

Robert D. Mayberger  
Clerk of the Court