

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: January 5, 2012

512356

In the Matter of the Claim of  
VANESSA RICHMAN,  
Respondent,

v

AFFIRMED Board's ruling that evidence presented met §21 presumption of Causal Relationship. Board reversed itself several times before this last decision.

NYS UNIFIED COURT SYSTEM  
et al.,

Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,  
Respondent.

Calendar Date: November 22, 2011

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

Gregory J. Allen, New York State Insurance Fund, New York City (Patricia M. Barry of counsel), for appellants.

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

Egan Jr., J.

Appeal from a decision of the Workers' Compensation Board, filed August 18, 2010, which ruled that claimant sustained a compensable injury and awarded workers' compensation benefits.

On August 10, 2007, claimant, a court reporter, was found unconscious at her workplace and rushed to a local hospital, where she was diagnosed with a subarachnoid hemorrhage caused by

a ruptured basilar artery aneurysm. Although claimant survived, she apparently remains unable to communicate. A workers' compensation claim subsequently was filed on her behalf, and the employer and its workers' compensation carrier (hereinafter collectively referred to as the employer) controverted the claim, asserting that the ruptured aneurysm was not related to claimant's employment. Following a hearing, a Workers' Compensation Law Judge (hereinafter WCLJ) found that the employer did not overcome the presumption of compensability set forth in Workers' Compensation Law § 21 (1). The Workers' Compensation Board affirmed the WCLJ's decision, prompting this appeal by the employer.

We affirm. Pursuant to Workers' Compensation Law § 21 (1), a presumption of compensability exists where, as here, an unwitnessed or unexplained injury occurs during the course of the affected worker's employment (see Matter of Brown v Clifton Recycling, 1 AD3d 735, 735 [2003]). "The employer may overcome the presumption by presenting substantial evidence to the contrary" (Matter of Steadman v Albany County, 84 AD3d 1649, 1650 [2011] [internal quotation marks and citations omitted]).

Here, we find no basis upon which to disturb the Board's conclusion that the employer did not present sufficient evidence to overcome the presumption. The record establishes that, prior to claimant's collapse, she was under considerable stress at work and her workplace was loud and overheated. While the employer's expert opined that claimant's ruptured aneurysm was unrelated to her employment, the Board agreed with the WCLJ that the expert's report and testimony were not credible – in large measure because he was evasive when questioned as to whether work-induced stress could raise a person's blood pressure high enough to cause an aneurysm to rupture. Notably, the expert acknowledged that high blood pressure could be a factor in the rupture of an aneurysm and conceded that he did not know what claimant's blood pressure was at the time the rupture occurred. Contrary to the employer's argument, the Board, which "is the sole arbiter of witness credibility" (Matter of Hammes v Sunrise Psychiatric Clinic, Inc., 66 AD3d 1252, 1252 [2009]), was not required to wholly credit the expert's opinion on this point simply because it was the only expert proof presented (see Matter of Musa v Nassau

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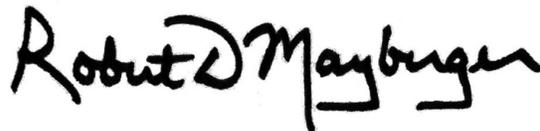
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County Police Dept., 276 AD2d 851, 852 [2000]). The employer's remaining arguments on this point, to the extent not specifically addressed, have been examined and found to be lacking in merit.

Spain, J.P., Malone Jr., Stein and McCarthy, 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