

Supreme Court, Appellate Division

Third Judicial Department

Decided and Entered: February 9, 2012

510820

In the Matter of the Claim of
RICHARD SEARCHFIELD,
Respondent,

v

LOWE'S HOME CENTERS, INC.,
et al.,
Appellants.

WORKERS' COMPENSATION BOARD,
Respondent.

AFFRIMED the Board's rulings that (1) claim was timely filed and (2) additional site of injury was causally-related.

MEMORANDUM AND ORDER

Calendar Date: January 13, 2012

Before: Mercure, Acting P.J., Peters, Malone Jr., Kavanagh and
McCarthy, JJ.

Wolff, Goodrich & Goldman, L.L.P., Syracuse (Robert E. Geyer Jr. of counsel), for appellants.

Law Office of Thomas N. Kaufmann, Fayetteville (Thomas N. Kaufmann of counsel), for Richard Searchfield, respondent.

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

Peters, J.

Appeals from a decision and an amended decision of the Workers' Compensation Board, filed December 30, 2009 and January 13, 2010, which, among other things, ruled that claimant's application for workers' compensation benefits was timely filed

and awarded benefits.

In October 2005, claimant was injured at his workplace while lifting a hot water heater. The initial diagnosis by the emergency room physician was "myofascial strain of legs [and] hips." A physician's report following a November 22, 2005 examination of claimant diagnosed him with hip/thigh sprain and sciatica. Later physician reports, however, focused on claimant's complaints of groin, lower back and leg pain. In July 2006, a Workers' Compensation Law Judge (hereinafter WCLJ) established a work-related injury to claimant's lower back, found prima facie medical evidence of groin strain and awarded workers' compensation benefits. Thereafter, claimant reported that his symptoms were worsening and he was referred for further treatment. Subsequently, an MRI of claimant's sacrum revealed signs of, among other things, "a possible paralabral or synovial cyst." Claimant was referred to an orthopedic surgeon, Michael Wiese, who, in a January 2009 report, opined that claimant had, among other things, a right hip labral tear and requested authorization for surgery. According to Wiese, claimant was originally misdiagnosed and he had, in fact, sustained injuries to his right hip as a result of the October 2005 accident. Claimant sought to amend his claim to include the injuries to his right hip. Following the submission of competing medical proof, a WCLJ found that the claim was time-barred pursuant to Workers' Compensation Law § 28 and, in any event, the condition was not causally related to the subject accident. Upon review, the Workers' Compensation Board reversed the WCLJ and issued a decision and an amended decision holding that claimant's right hip condition is properly included in the claim as a work-related injury, which was not time-barred. These appeals by the employer and its workers' compensation carrier (hereinafter collectively referred to as the employer) ensued.

Initially, we are unpersuaded by the employer's contention that the Board should have dismissed as untimely the claim for a causally-related right hip condition. Pursuant to Workers' Compensation Law § 28, a claim that is not filed within two years of the date of the accident is time-barred. Notably, "[w]hether a claim has been filed in a timely manner presents a factual issue for the Board to resolve, and such determination, if

supported by substantial evidence in the record as a whole, will not be disturbed" (Matter of Schley v North State Supply, 309 AD2d 1092, 1093 [2003]). While the employer maintains that the amendment to the claim is time-barred, we disagree. Not only do the early medical reports reflect initial concerns relating to claimant's hips, there was competent medical proof supporting the Board's finding that claimant's ongoing pain "was the result of a labral tear in the right hip, a condition which is often misdiagnosed as a low back injury." Thus, the Board did not, as argued by the employer, conclude that the hip condition was consequential in relation to the original diagnosis of low back injury (see e.g. Matter of Jones v Cowper Co., 80 AD2d 685, 685 [1981]). Instead, the Board amended the original claim to reflect the correct diagnosis of a directly-related hip condition. Since claimant could not have filed a claim for causally-related hip injuries until this condition was properly identified and diagnosed in the latter months of 2007, we are persuaded that this matter is not time-barred.

Turning to the employer's final contention that the Board erroneously found that the right hip condition is causally related to the October 2005 accident, we are similarly unpersuaded. "The Board is empowered to determine the factual issue of whether a causal relationship exists based upon the record, and its determination will not be disturbed when supported by substantial evidence" (Matter of Virtuoso v Glen Campbell Chevrolet, Inc., 66 AD3d 1141, 1142 [2009] [citations omitted]). Here, the Board specifically credited the testimony of claimant's physicians as to causation. While the independent medical expert disagreed, the Board noted that this expert also acknowledged that it was possible for hip problems to be misdiagnosed in situations where they originally manifest in low back complaints. Given that "the resolution of conflicting medical opinions is within the province of the Board, particularly where the conflict concerns the issue of causation" (Matter of Ciafone v Consolidated Edison of N.Y., 54 AD3d 1135, 1136 [2008]), we find substantial evidence supporting the Board's ruling as to causation.

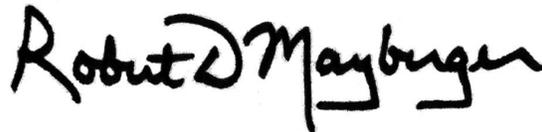
Mercure, Acting P.J., Malone Jr., Kavanagh and McCarthy, JJ., concur.

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ORDERED that the decision and amended decision are affirmed, with costs to claimant.

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