

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 4, 2014

518135

In the Matter of the Claim of
EFREN CEDENO,
Appellant,
v



PACOA et al.,
Respondents.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION BOARD,
Respondent.

Denied request for
change of venue

Calendar Date: August 21, 2014

Before: McCarthy, J.P., Garry, Egan Jr., Lynch and Clark, JJ.

Law Offices of Joseph Romano, New York City (Anthony Brooks-Morgese of counsel), for appellant.

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

McCarthy, J.P.

Appeal from a decision of the Workers' Compensation Board, filed June 25, 2013, which, among other things, assessed a monetary penalty against claimant's counsel pursuant to Workers' Compensation Law § 114-a (3) (ii).

Claimant resides in Queens and, after he was purportedly injured while working in Nassau County, applied for workers' compensation benefits. With that application, claimant submitted a form on counsel's letterhead in which he requested that all

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hearings in his case be handled at a hearing site in the City of White Plains, Westchester County. The Workers' Compensation Law Judge found that no basis existed for a change of venue and assessed counsel fees of \$250 against claimant's counsel pursuant to Workers' Compensation Law § 114-a (3) (ii). Upon review, the Workers' Compensation Board modified by increasing the assessment of counsel fees to \$500. Claimant now appeals.¹

We affirm. The Chair of the Board generally sets "the times and places for the hearing of claims" by venuing them in the district in which a claimant resides if he or she lives in New York (Workers' Compensation Law § 141; see 12 NYCRR 300.7 [b]). A claimant may submit a written request for change of venue that articulates the reasons for his or her request, and a written decision must be issued thereon. Claimant's challenges to that policy are unpreserved for our review given that he failed to raise them before the Board (see Matter of Mejia v Camabo Indus., Inc., 117 AD3d 1362, 1362 [2014]; Matter of Toledo v Administration for Children Servs., 112 AD3d 1209, 1210 [2013]). Moreover, claimant's request for a change of venue was a procedural motion that necessitated a response, and the Board properly determined that it was a "proceeding[] in respect of [a claim for compensation]" within the meaning of Workers' Compensation Law § 114-a (3) (see Matter of Banton v New York City Dept. of Corr., 112 AD3d 1195, 1196 [2013]).

Turning to the merits, claimant's unsubstantiated assertion that it would be "most convenient" for him to attend hearings in a district with no connection to either his residence or the

¹ Given that the only issues on this appeal relate to the assessment of counsel fees, "counsel is the party in interest pursuant to Workers' Compensation Law § 23 and 'should have filed the notice of appeal on [his] own behalf'" (Matter of Wolfe v New York City Dept. of Corr., 112 AD3d 1197, 1198 [2013], quoting Matter of Banton v New York City Dept. of Corr., 112 AD3d 1195, 1196 n [2013]). No allegation of prejudice has been made, however, and we will disregard that defect and treat the appeal as having been taken by counsel (see CPLR 2001; Matter of Wolfe v New York City Dept. of Corr., 112 AD3d at 1198).

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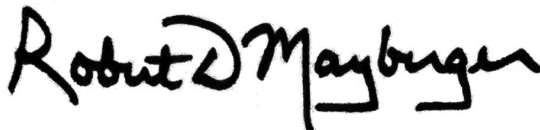
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accident site did not warrant a change in venue. Counsel for claimant was well aware that such groundless requests for a venue change would be rejected and, thus, substantial evidence supports the Board's assessment of counsel fees pursuant to Workers' Compensation Law § 114-a (3) (ii) (see Matter of Difilippo v Con Edison, 117 AD3d 1363, 1364 [2014]; Matter of Wolfe v New York City Dept. of Corr., 112 AD3d 1197, 1198 [2013]). Lastly, we are unpersuaded that the Board lacked authority to modify the decision of the Workers' Compensation Law Judge and increase the amount of that assessment (see Workers' Compensation Law § 23).

Garry, Egan Jr., Lynch and Clark, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court