

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

Decided and Entered: September 17, 2026

CV-25-0826

In the Matter of the Claim of
 GISELL ROSARIO,
 Claimant,
 v

THE WILLIAM CARTER
 COMPANY et al.,
 Appellants.

MEMORANDUM AND ORDER

WORKERS' COMPENSATION
 BOARD,
 Respondent.

Calendar Date: September 9, 2026

Before: Garry, P.J., Aarons, Pritzker, McShan and Mackey, JJ.

Vaughan McLean, Amherst (*Danielle S. Engel* of counsel), for appellants.

Letitia James, Attorney General, New York City (*Nina M. Sas* of counsel), for respondent.

McShan, J.

Appeal from a decision of the Workers' Compensation Board, filed April 22, 2025, which ruled that claimant sustained an accidental injury arising out of and in the course of her employment and awarded workers' compensation benefits.

Claimant was working as an assistant manager at a retail store in Queens when, on December 11, 2023, she was scanning in newly delivered boxes of merchandise and struck her lower left leg with a box she had dropped. She reported the incident to the employer and sought medical treatment the same day for pain in her left foot, then sought further treatment a few days later for pain in her left knee. Claimant filed a claim for workers' compensation benefits arising out of the incident that was controverted by the employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier). Following proceedings that included depositions of medical providers who treated claimant or examined her at the carrier's behest, a review of surveillance video footage of the incident and a hearing at which claimant and others testified, a Workers' Compensation Law Judge established the claim for injuries to claimant's left knee and left foot. Upon administrative review, the Workers' Compensation Board affirmed. The carrier appeals.

We affirm. Whether a compensable accident has occurred is a question of fact for the Board to resolve, and we will not disturb its determination so long as such is supported by substantial evidence in the record (*see Matter of Balseca v Hudson Concrete Inc.*, 238 AD3d 1415, 1415 [3d Dept 2025]; *Matter of Leon v Structure Tech N.Y., Inc.*, 225 AD3d 1071, 1072 [3d Dept 2024]). "In this regard, the claimant bears the burden of establishing that the subject injury arose out of and in the course of his or her employment and, further, must demonstrate, by competent medical evidence, the existence of a causal connection between his or her injury and his or her employment" (*Matter of Herrera v Tempo Carpentry LLC*, 242 AD3d 1285, 1286 [3d Dept 2025] [internal quotation marks and citations omitted]; *see Matter of Balseca v Hudson Concrete Inc.*, 238 AD3d at 1415).

Claimant testified that the accident occurred when she was moving one of the newly arrived boxes off to her left and, not "realiz[ing] that [her] foot was in the way," dropped the box on the lower portion of her left leg. The surveillance video of the incident, which shows claimant looking elsewhere as she drops the box near her left leg and then reacting in a manner consistent with her being struck by it, corroborated her account (*compare Matter of Fernandes v Del Frisco's Rest. GRP*, 159 AD3d 1319, 1319-1320 [3d Dept 2018]). The Board credited this proof that claimant was injured in the course of her work, raising the presumption under Workers' Compensation Law § 21 "that, in the absence of substantial evidence to the contrary, it also arose out of the employment" (*Matter of Grimaldi v Shop Rite Big V*, 90 AD2d 608, 608 [3d Dept 1982]; *see Workers' Compensation Law* § 10 [1]; *Matter of Enriquez v Home Lawn Care & Landscaping, Inc.*, 77 AD3d 1149, 1151 [3d Dept 2010]). The Board found that the

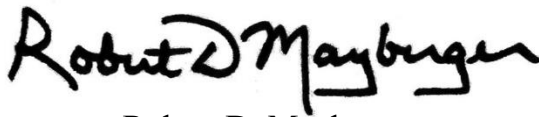
carrier had not rebutted that presumption, accurately noting, among other things, that even the orthopedic surgeon who examined claimant at the carrier's request concluded that she had been injured in the accident and that the video footage of the incident gave no support for the carrier's proposition that she had intentionally sought to injure herself (*see* Workers' Compensation Law § 21 [3]; *Matter of McGee v Johnson Equip. Sales & Serv.*, 184 AD3d 935, 935-936 [3d Dept 2020]). After reviewing the record, and according deference to the credibility determinations of the Board, we are satisfied that substantial evidence supports its findings that there were accidental injuries arising out of and in the course of claimant's employment (*see Matter of Zobel v Chemung County*, 136 AD3d 1140, 1140-1141 [3d Dept 2016], *lv denied* 27 NY3d 907 [2016]; *Matter of Enriquez v Home Lawn Care & Landscaping, Inc.*, 77 AD3d at 1151).

As for what injuries were causally linked to the accident, the Board credited the opinion of an orthopedic surgeon who examined claimant at the carrier's behest and agreed with her treating physicians that she had injured her left foot in the accident. The Board further credited the opinions of claimant's treating physicians that her left knee was also injured as a result of the accident over the equivocal opinion of the orthopedic surgeon that it was not. In view of "the Board's authority to resolve conflicting medical opinions and to draw reasonable inferences from record evidence," as well as to accept or reject portions of medical opinions, we also find substantial evidence in the record for its determination that claimant suffered causally related injuries to her left foot and knee (*Matter of Herrera v Tempo Carpentry LLC*, 242 AD3d at 1288 [internal quotation marks and citations omitted]; *see Matter of Balseca v Hudson Concrete Inc.*, 238 AD3d at 1417; *Matter of Sedlock v Employ Bridge*, 172 AD3d 1684, 1685 [3d Dept 2019]). To the extent that they are not addressed by the foregoing, the carrier's arguments have been examined and found to be unavailing.

Garry, P.J., Aarons, Pritzker and Mackey, 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, flowing style with a large initial "R" and a distinct "D" in the middle.

Robert D. Mayberger
Clerk of the Court