

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Foster v. Monadnock Constr. Inc.

2026 NY Slip Op 00554 (Appellate Division of the Supreme Court of the State of New York Third Department 2026) · No. CV-24-1581 · Decided February 5, 2026

SUMMARY

The Appellate Division, Third Department affirmed a Workers' Compensation Board decision holding that the claimant's claim was not barred by the two-year limitations period in Workers' Compensation Law § 28. The court concluded that the Board received sufficient notice of the injury and a potential compensation claim within two years of the accident, based on accident notifications and medical records. The court further explained that a timely claim may be amended to include consequential injuries.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Ceresia, J.; Fisher, J.; McShan, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	February 5, 2026
DOCKET	CV-24-1581
DISPOSITION	affirmed
PROCEDURAL POSTURE	The employer and its workers' compensation carrier appealed from a Workers' Compensation Board decision ruling that the claimant's claim for benefits relating to additional conditions was not barred by Workers' Compensation Law § 28.
STANDARD OF REVIEW	The Board's determination regarding whether a claim was timely filed is reviewed for substantial evidence and will not be disturbed if supported by substantial evidence in the record as a whole.
PRECEDENTIAL VALUE	Published
PARTIES	Monadnock Construction Inc. et al., employer and workers' compensation carrier v. Workers' Compensation Board

TOPICS

workers compensation

administrative law

statutory interpretation

construction law

PRACTICE AREAS

workers compensation

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QUESTIONS PRESENTED

1. Whether the Board received sufficient notice within two years of the accident to constitute the filing of a workers' compensation claim under Workers' Compensation Law § 28.
2. Whether the two-year limitations period barred claimant from amending the timely claim to include consequential injuries or conditions related to the original accident.

HOLDINGS

1. A workers' compensation claim is timely when the claim form or other documents provided to the Board within two years of the accident contain sufficient facts from which it may reasonably be inferred that a claim for compensation was being made. The accident notice and medical records submitted to the Board constituted substantial evidence supporting the Board's determination that a timely claim had been received.
2. The two-year limitations period in Workers' Compensation Law § 28 does not bar amendment of a timely claim to include consequential injuries arising from the initial compensable accident.

KEY QUOTATIONS

*“The filing of a claim is not necessarily measured from the date the injured employee submits a claim form; rather, a claim is deemed filed at the point that the “claim form or other documents are sufficient to provide the Board with the facts of the injury from which it might be reasonably inferred that a claim for compensation was being made”” (*1)*

*“the two-year time limit set forth in Workers' Compensation Law § 28 does not bar amendment of the timely claim to include” (*2)*

FACTUAL BACKGROUND

Claimant, a laborer, was struck in the face by a ladder at work in May 2020. The Workers' Compensation Board was notified of the accident, the carrier accepted liability for the facial injuries, and hospital records submitted to the Board in November 2020 documented facial trauma, lightheadedness, head-radiating pain, emergency-department observation, and a CT scan. In 2023, claimant's physicians sought authorization for treatment of traumatic brain injury, postconcussion syndrome, cognitive deficits, and headaches causally related to the accident, and the carrier argued that any claim for those conditions was untimely.

PROCEDURAL HISTORY

Claimant was injured in a May 2020 workplace accident, and the Board was notified of the accident while the carrier accepted liability for his facial injuries. In 2023, after physicians sought authorization for treatment of traumatic brain injury, postconcussion syndrome, cognitive deficits, and headaches allegedly related to the

accident, the carrier disputed liability and claimant filed a claim. The Board rejected the carrier's two-year limitations defense, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Garcia v. WTC Volunteer, ___ NY3d ___, ___, 2025 NY Slip Op 06360, *1 [2025]
- Matter of Davenport v. Oxford Cent. Sch. Dist., 236 AD3d 1264, 1266-1267 [3d Dept 2025]
- Matter of Perry v. DOCCS Clinton Corr. Facility, 218 AD3d 973, 974 [3d Dept 2023]
- Matter of Cotterell v. Trinity Health Corp., 209 AD3d 1071, 1071-1072 [3d Dept 2022]
- Matter of McCutcheon v. Public Serv. Dept., 290 AD2d 679, 680 [3d Dept 2002]
- Matter of Palevsky v. New York City Bd. of Educ., 246 AD2d 836, 837 [3d Dept 1998], lv dismissed 92 NY2d 876 [1998], lv denied 93 NY2d 818 [1999]
- Matter of Traver v. Rickard Constr. Co., 286 AD2d 808, 809 [3d Dept 2001]

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