

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

Matter of Fleming v. DOCCS Attica Corr. Facility

2026 NY Slip Op 01572 · No. CV-24-1667 · Decided March 19, 2026

SUMMARY

The New York Appellate Division, Third Department affirmed the Workers' Compensation Board's denial of a claimant's request to amend his claim to include consequential bilateral hip injuries. The court held that substantial evidence supported the Board's finding that the hip condition was not causally related to the established right foot injury and that authorization of hip replacement surgery did not constitute an admission of compensability under 12 NYCRR 324.4(d).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Corcoran, J.; Clark, J.P.; Aarons, J.; Pritzker, J.; McShan, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	March 19, 2026
DOCKET	CV-24-1667
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed from a Workers' Compensation Board decision affirming a Workers' Compensation Law Judge's disallowance of consequential bilateral hip injuries and rejection of claimant's contention that the State Insurance Fund accepted liability by authorizing left hip replacement surgery.
STANDARD OF REVIEW	The Board's determination regarding whether a consequential injury arose from an existing compensable injury will not be disturbed when supported by substantial evidence. The Board may resolve conflicting medical opinions, assess witness credibility, and draw reasonable inferences from the record.
PRECEDENTIAL VALUE	published
PARTIES	Donald Fleming v. DOCCS Attica Correctional Facility et al., Workers' Compensation Board

TOPICS

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standard of review

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the Workers' Compensation Board's disallowance of claimant's request to amend his established claim to include consequential bilateral hip injuries.
2. Whether the State Insurance Fund's Level 2 authorization of left hip replacement surgery constituted an admission or acceptance of liability for the alleged consequential hip injury.

HOLDINGS

1. The Workers' Compensation Board properly disallowed the amendment because substantial evidence supported its finding that claimant failed to establish a causal relationship between the bilateral hip condition and the established right-foot injury.
2. The State Insurance Fund's Level 2 authorization of left hip replacement surgery did not constitute an admission of compensability or acceptance of liability for the unestablished consequential hip injury.

KEY QUOTATIONS

"A consequential injury . . . is one that results directly and naturally from [a] prior injur[y] and the disability thereby produced" (*2)

"If a claim is controverted or the time to controvert the claim has not expired, and the insurance carrier, self-insured employer or third-party administrator agrees that the medical care for which a PAR is requested is consistent with the Medical Treatment Guidelines or is medically necessary, such agreement shall not be construed as an admission that the condition for which the PAR is requested is compensable and the insurance carrier, self-insured employer or third-party administrator is not liable for the cost of such treatment unless the claim or condition is established." (*3)

FACTUAL BACKGROUND

Fleming sustained a 2015 work-related right-foot and ankle injury requiring multiple surgeries. After developing bilateral hip pain and severe osteoarthritis, his physicians differed over whether an altered gait caused by the foot injury activated or aggravated the hip condition. The State Insurance Fund initially denied authorization for left hip replacement surgery as unrelated to the established claim, but later granted Level 2 authorization after determining that the surgery was consistent with the Medical Treatment Guidelines and medically necessary. The Board credited an independent medical opinion attributing the hip condition to preexisting arthritis rather than the foot injury.

PROCEDURAL HISTORY

Fleming had an established workers' compensation claim for a 2015 right-foot and ankle injury. After his request to amend the claim to include consequential bilateral hip injuries, the Workers' Compensation Law Judge disallowed the amendment and resolved related medical bills in favor of the State Insurance Fund. The Workers' Compensation Board affirmed, and the Appellate Division affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Matter of Cho v New York City Tr. Auth., 242 AD3d 1279, 1280-1281 [3d Dept 2025]
- Matter of Campito v New York State Dept. of Taxation and Fin., 153 AD3d 1063, 1064 [3d Dept 2017]
- Matter of Becker v United Cerebral Palsy Assoc., 231 AD3d 1255, 1256-1257 [3d Dept 2024], appeal dismissed 44 NY3d 1029 [2025]
- Matter of Brennan v Village of Johnson City, 213 AD3d 1058, 1060 [3d Dept 2023]
- Matter of Brown v Laboratory Corp. of Am., 222 AD3d 1127, 1130-1131 [3d Dept 2023]
- Matter of DiPippo v Accurate Signs & Awnings, 231 AD3d 1213, 1215 [3d Dept 2024]
- Matter of Kot v Beth Ameth Home Attendant Serv., 70 AD3d 1114, 1115 [3d Dept 2010]