

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

Matter of Moe v. America Ootoya Chelsea

2026 NY Slip Op 00551 · No. CV-24-0962 · Decided February 5, 2026

SUMMARY

The New York Appellate Division, Third Department affirmed Workers’ Compensation Board decisions establishing an occupational disease claim for bilateral elbow injuries sustained by a line cook. The court held that the carrier’s notice of controversy was untimely under Workers’ Compensation Law § 25 (2) (b), that no good cause excused the delay, and that the carrier was properly precluded from disputing causation. The court also upheld denial of an adjournment request and found substantial evidence supporting the claim.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Aarons, J.P.; Pritzker, J.; Ceresia, J.; Powers, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	February 5, 2026
DOCKET	CV-24-0962
DISPOSITION	affirmed
PROCEDURAL POSTURE	The employer and its workers' compensation carrier appealed from Workers' Compensation Board decisions affirming rulings that the carrier's notice of controversy was untimely, denying an adjournment request, and establishing claimant's occupational-disease claim for bilateral elbow injuries.
STANDARD OF REVIEW	Whether the Board properly applied Workers' Compensation Law § 25 (2) (b), whether denial of an adjournment was authorized under the Board's expedited-hearing regulations, and whether substantial evidence supported establishment of the occupational-disease claim.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	America Ootoya Chelsea et al. v. Workers' Compensation Board

TOPICS

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judicial review of agency action

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board properly found the carrier's notice of controversy untimely under Workers' Compensation Law § 25 (2) (b) and refused to deem it timely for good cause.
2. Whether the Board properly barred the carrier from disputing specified elements of the claim, including whether claimant was an employee, whether an accidental injury occurred, and whether the injury arose out of and in the course of employment.
3. Whether the Workers' Compensation Law Judge properly denied the carrier's request to adjourn the deposition of claimant's treating physician while the carrier's administrative appeal was pending.
4. Whether substantial evidence supported the Board's finding that claimant established a causally related occupational disease involving bilateral elbow injuries.

HOLDINGS

1. The Board properly determined that the carrier's notice of controversy was untimely and properly denied the carrier's request to deem it timely because the carrier failed to show good cause for the 87-day delay.
2. The carrier was properly precluded from disputing claimant's evidence on causation and from pleading that no employer-employee relationship existed, that no accident occurred, or that the injury did not arise out of and in the course of employment.
3. The Board properly denied the carrier's request to adjourn the treating physician's deposition because a pending administrative appeal did not constitute an emergency under the Board's expedited-hearing regulations.
4. Substantial evidence supported the Board's finding that claimant established a causal relationship between her bilateral elbow condition and a distinctive feature of her employment.

KEY QUOTATIONS

“Failure to file the notice of controversy within the prescribed [25-]day time limit [from the date of mailing of a notice that the case has been indexed] shall bar the employer and its insurance carrier from pleading that the injured person was not at the time of the accident an employee of the employer, or that the employee did not sustain an accidental injury, or that the injury did not arise out of and in the course of the employment”
(2)

“a matter transferred to the special expedited hearing process shall only be adjourned “in an emergency””
(2-3)

FACTUAL BACKGROUND

Than Moe, a line cook, claimed that employment duties caused injuries and bilateral elbow pain. The Board mailed notice indexing the claim to the carrier's address on file on January 23, 2023, but the carrier filed its notice of controversy on April 20, 2023, 87 days later. The carrier asserted that it had not received the indexing notice, but the record showed that the notice was mailed to the correct address and that other documents had been sent there. Claimant's testimony and her treating physician's medical report supported a causal relationship between her bilateral elbow condition and a distinctive feature of her employment.

PROCEDURAL HISTORY

Claimant filed a workers' compensation claim in December 2022. The carrier did not file its notice of controversy within 25 days after the Board mailed notice that the claim had been indexed, and the Workers' Compensation Law Judge denied the carrier's request to excuse the delay, barred specified defenses, denied an adjournment request, and established the occupational-disease claim. The Board affirmed those rulings in a decision filed April 16, 2024, and amended that decision on August 28, 2024 without changing the result. The Appellate Division affirmed both Board decisions.

DISPOSITION

affirmed

CASES CITED

- Matter of Cappellino v. Baumann & Sons Bus Co., 18 NY3d 890, 891-892 (2012)
- Matter of Maffei v. Russin Lbr. Corp., 146 AD3d 1207, 1208-1209 (3d Dept 2017)
- Matter of Brancato v. New York City Tr. Auth., 206 AD3d 1418, 1418-1419 (3d Dept 2022)
- Matter of Bigdoski v. Bausch & Lomb, 197 AD3d 1379, 1380 (3d Dept 2021)