

Decided and Entered: June 17, 2010

507642

In the Matter of the Claim of
MARLON S. BROWN,
Appellant,

v

MEMORANDUM AND ORDER

NEW YORK CITY DEPARTMENT OF
CORRECTION,
Respondent.

WORKERS' COMPENSATION BOARD,
Respondent.

Calendar Date: May 25, 2010

Before: Spain, J.P., Lahtinen, Stein, McCarthy and Garry, JJ.

John F. Clennan, Ronkonkoma, for appellant.

Michael A. Cardozo, Corporation Counsel, New York City
(John Sweeney of counsel), for New York City Department of
Correction, respondent.

Lahtinen, J.

Appeal from a decision of the Workers' Compensation Board,
filed October 24, 2008, which ruled that claimant did not sustain
a causally related injury and denied his claim for workers'
compensation benefits.

After claimant became lightheaded at work in 1999 it was
determined that his lightheadedness was caused by cardiomyopathy.
He was thereafter absent from work for several months and applied
for workers' compensation benefits, arguing that work-related

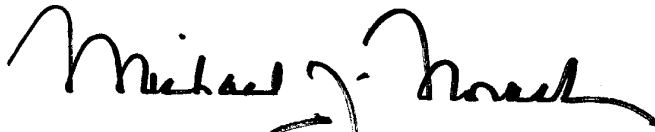
stress led to hypertension which, in turn, triggered the cardiomyopathy. The Workers' Compensation Board disallowed his claim, finding that he had not established a causal link between job stress and his cardiac condition. He appeals and we affirm.

Claimant suggests that the manifestation of his condition at work gave rise to a presumption that it arose out of and in the course of his employment (see Workers' Compensation Law § 21 [1]; Matter of Musicus v Broadway Pastry Shop, 81 AD2d 723 [1981]). He failed to raise this issue before the Board, however, and it is accordingly unpreserved for our review (see Matter of Bond v Suffolk Transp. Serv., 68 AD3d 1341, 1342 [2009]; Matter of Neville v Magazine Distribs., Inc., 61 AD3d 1165, 1166 [2009], lv denied 12 NY3d 712 [2009]). In any event, the presumption applies where an accident is unwitnessed or unexplained and, given that claimant described his accident and provided medical evidence that it was caused by work-related cardiomyopathy, neither is the case here (see Matter of Moltzon v Computer Assoc., 39 AD3d 1053, 1053 [2007]; Matter of Crapo v City of Buffalo, 24 AD3d 838, 839 [2005]; cf. Matter of Thompson v Genesee County Sheriff's Dept., 43 AD3d 1252, 1253 [2007]). In contrast to claimant's medical evidence, an impartial cardiologist who examined claimant at the Board's request found no causal link between claimant's work and his cardiac distress. That doctor further stated that no specific cause for hypertension could be found in most cases, that stress did not uniformly cause hypertension and that he was skeptical that claimant's hypertension and cardiomyopathy were connected given that the latter could only be caused by prolonged, severe and untreated hypertension. As the Board was free to credit that opinion over medical evidence to the contrary, substantial evidence supports its determination (see Matter of Tienken v Dancing Waters, 86 AD2d 911 [1982]).

Spain, J.P., Stein, McCarthy and Garry, JJ., concur.

ORDERED that the decision is affirmed, without costs.

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive style with a large, looping initial "M".

Michael J. Novack
Clerk of the Court