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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of DERRICK ANDREWS, Respondent,

v.

COMBINED LIFE INSURANCE COMPANY et al., Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

January 19, 2017

Facts: In 2005, claimant was awarded workers' compensation benefits for a neck injury. In 2007, a WCLJ found that claimant had a permanent partial disability directing payment at \$400 per week with no further action. In 2014, the carrier sent letters to claimant and his counsel seeking documentation of work search and received no response. The next year, the carrier retained a rehabilitation counselor and assigned him to be claimant's counselor for case management services. A letter was written to claimant and his counsel stating the rehabilitation counselor was assigned as claimant's counselor for case management services. Claimant's attorney declined the services. Following such in actions the employer and carrier applied to reopen the case for labor market attachment. The WCLJ denied the request, finding that the carrier hadn't raised a question of fact as to whether there was a case for claimant's reduction in wage-earning capacity other than disability and the Board assessed a \$500 penalty against the carrier for filing to reopen without reasonable grounds.

Holding: *Modified by reversing the penalty of \$500 against the carrier.*

Discussion: The Court found that the Board did not abuse its discretion in finding that claimant's failure to respond to the carrier's request for job search information was insufficient to support a reopening of the claim. In addition, his rejection of the rehabilitation counselor's services wasn't sufficient to reopen the claim, for no specific offers of employment, job training, or assistance in returning to work was

mentioned in the letter. In regards to the penalty imposed, the Court found the Board did not abuse its discretion when it found the carrier had filed a request to reopen without the proper supporting documentation. However, it also found that the Board was wrong on imposing the penalty against the carrier because the Carrier reasonably relied on the evidence that it submitted in support of the reopening, even if the Board did not, ultimately, credit it as sufficient for reopening the claim.

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