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Supreme Court, Appellate Division, Third Department, New York

In the Matter of MICHAEL ANGORA, Appellant  
v.

WEGMAN'S FOOD MARKETS, INC., Respondent  
and  
WORKERS' COMPENSATION BOARD, Respondent

April 25, 2019

Facts: The claimant was injured in August 2015 and received benefits from September 2015 through February 2016. The carrier produced surveillance of the claimant ranging from October 2015 through January 2016 showing that the claimant had opened a restaurant/bar and he acknowledged that he performed work-related activities at the restaurant/bar, including taking out trash, serving food and drinks and entering orders. He did not notify his treating physicians, the employer or the carrier regarding these activities, although he was receiving compensation checks. The treating physicians all opined the claimant had a temporary total disability during this time. The Board found a WCL § 114-a violation and instituted both a mandatory penalty and a discretionary lifetime indemnity ban. The Board Panel affirmed.

Holding: Affirmed.

Discussion: The Third Department found the Board's decision was supported by substantial evidence in the record. The claimant failed to notify his own doctors, the employer and the carrier regarding his work activities, while he continued cashing indemnity checks. The Board found the claimant's non-disclosure was sufficient to warrant a discretionary lifetime indemnity ban. The claimant failed to disclose he was engaged in a private business activity for the purpose of making a profit while collecting indemnity benefits. The Third Department affirmed an

omission/non-disclosure is sufficient to support a finding of a lifetime indemnity ban.

*Stewart, Greenblatt, Manning & Báez*