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Supreme Court, Appellate Division, Third Department, New York

In the Matter of ANA GALEANO, Appellant
v.

INTERNATIONAL SHOPPES, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

April 25, 2019

Facts: The claimant was classified with a permanent partial disability in 2005. Subsequently, she had a 2007 motor vehicle accident with overlapping injuries and treated for that accident through no-fault. The claimant's doctor requested a total knee replacement in 2014, though the request was ultimately withdrawn. The carrier raised fraud under WCL § 114-a on the basis that the claimant failed to disclose the subsequent MVA. The judge found there was not a § 114-a violation and the carrier appealed. The Board Panel affirmed on the basis that the claimant was already receiving benefits pursuant to her classification at the time of the subsequent MVA and that the claimant didn't intentionally withhold information for the purpose of obtaining benefits she was already entitled to receive. The claimant additionally disclosed the MVA to an IME in 2012.

Holding: Affirmed.

Discussion: The Third Department noted the claimant had been classified with a permanent partial disability in 2005 and was receiving benefits at the time of intervening 2007 MVA. Thus, any purported omission by the claimant to her treating physician could not have been done for the purpose of obtaining compensation benefits pursuant to WCL § 15 as she was already entitled to benefits pursuant to her classification.