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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of MATTHEW PERSONS, Appellant,  
v.  
HALMAR INTERNATIONAL, LLC, et. al., Respondents  
And  
WORKERS' COMPENSATION BOARD, Respondent.

April 11, 2019

Facts: The claimant, a construction worker, was injured when he got stuck inside of a pipe that began to fill with water. His claim was established, and he began receiving benefits. Subsequently the carrier alleged that he had violated Section 114-a of the workers' compensation law. After litigation the Law Judge agreed, finding that the claimant had failed to disclose the fact that he was a volunteer firefighter and exaggerated his injuries. The claimant was permanently disqualified from indemnity benefits. The claimant appealed and the Board affirmed. The claimant now appeals.

Holding: Reversed and remanded.

Discussion: A violation of 114-a involves knowingly making a false statement or misrepresenting a material fact. When testifying, the claimant admitted to his activities as a volunteer firefighter. The claimant testified that he told both a psychiatrist and his therapist about the fact that he was a volunteer firefighter when being evaluated/treated for his causally-related PTSD. Some of the surveillance obtained by the carrier involved that claimant reporting to a call in his capacity as a volunteer firefighter, but the claimant was never questioned about the circumstances of the call or the extent of his participation. The other surveillance also did not really show the claimant behaving in a manner inconsistent with his disability. Here the Board's decision does not rest on substantial evidence but rather speculation and accordingly, the matter is returned to the Board for further development of the record.