

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Jose RIVERA, Appellant,
v.
JOSEPH L. BALKAN, INC., et al., Respondents,
WORKERS' COMPENSATION BOARD, Respondent

April 8, 2021

Facts: Claim was established for an injury to the claimant's back. Claimant had various periods of intermittent lost time and then returned to work at his usual position. He then stopped working based on an alleged exacerbation of his condition and an additional causally related site of injury. The carrier raised an issue of voluntary withdrawal from the labor market. Following a hearing, the WCLJ found that the claimant did not have the additional site of injury causally related to the claim and that he voluntarily removed himself from the labor market. On appeal, the Board affirmed. Claimant's request for full Board review was denied.

Holding: *Affirmed.*

Discussion: Record revealed that the claimant had reported an exacerbation of his injury and was directed to go to the employee health service. Claimant reported for evaluation but did not return for follow up care and then could not be reached for three weeks. Claimant was considered a no call/no show. After three weeks the claimant called to report that he would not be returning to work and then called again to ask to be paid his accrued vacation time. Claimant did not provide medical reports stating that he was unable to work. Board found that the employer's witnesses' testimony was more credible. Court found there was substantial evidence to support the Board's decision.