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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of TIMOTHY YOUNG, Appellant,

v.

ACRANOM MASONARY INC. et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

April 29, 2021

**Facts:** This is an established claim for an injury to the back. The claimant received voluntary indemnity payments from May 12, 2018 to June 21, 2019. The claimant's medical documentation indicated a temporary total disability. However, the claimant had returned to work for a different employer of April 1, 2019 without notifying the carrier or the Board. The carrier raised 114-a and disclosed video surveillance of the claimant. The WCLJ found a violation of 114-a by failing to disclose the return to work and implemented both mandatory and discretionary penalties, including a lifetime ban on indemnity payments. The claimant appealed and the Board Panel affirmed.

**Holding:** *Modified by reversing the permanent disqualification of indemnity benefits and otherwise, affirmed.*

**Discussion:** The Court affirmed that the claimant did violate section 114-a of the WCL by omitting and failing to disclose that he returned to work for the purposes of receiving workers' compensation benefits. With regards to the discretionary penalty, the Court noted one may be applied where the underlying deception has been deemed egregious or severe, or there was a lack of mitigating circumstances. In this case, the Court found that the permanent disqualification of indemnity payments was not supported by the record. Specifically, they cited to the fact that the claimant, when asked, did disclose that he had returned to work, the record did not show that the claimant had been directed at any hearings to report a return to work and there was no medical testimony regarding the claimant's disability.

*Stewart, Greenblatt, Manning & Báez*