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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Peter GIGLIA, Appellant

v

SUNY BUFFALO-UNION, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

April 21, 2022

Facts: Following a 2018 accident the claimant submitted several work activity reports requested by the carrier and denied working. Following a hearing the judge stated the claimant had not violated WCL §114-a, but the Board reversed finding the claimant had worked during a period of time he collected benefits. The record reflects that between 2018 and 2019 the claimant performed various side jobs including concrete, plaster and painting work. The claimant appealed.

Holding: *Modified only with regard to the effective dates of the mandatory penalty and otherwise affirmed.*

Decision: The Court confirmed there was substantial evidence that the claimant's failure to advise the parties as to his work constituted a misrepresentation. However, because the first misrepresentation did not begin until the claimant lied on a work affidavit on September 7, 2018, the mandatory penalty would be effective that date. However, the discretionary penalty of no future indemnity benefits was affirmed given the egregious nature of the claimant's fraud.