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Supreme Court, Appellate Division, Third Department, New York

In the Matter of PETER POMPEO, Respondent

v.

AUCTION DIRECT USA LP et al., Appellant.

WORKERS' COMPENSATION BOARD, Respondent.

Decided: July 27, 2017

Facts: The claimant had a compensable claim and received indemnity benefits until 2012, when they were suspended based on a lack of current medical evidence of a disability. In 2013, the claimant plead guilty to a crime that involved selling controlled substances and was sentenced to three years in prison. Upon his release, he requested the reinstatement of his indemnity benefits. This was opposed by the carrier who raised Section 114-a on the basis that the claimant failed to report his earnings from the sale of the controlled substances while he was receiving indemnity benefits. The Law Judge agreed and disqualified the claimant from all future indemnity benefits. A divided Board Panel reversed and the Full Board agreed. This appeal from the carrier ensued.

Holding: *Affirmed.*

Discussion: In as much as there is substantial evidence to support the Board's determination that there was insufficient evidence to show that the claimant received any income from the sale of the controlled substances while receiving benefits, it should be affirmed.