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Supreme Court, Appellate Division, Third Department, New York

In the Matter of SALVATORE CIRRINCIONE, Respondent,
v.
SCISSORS WIZARD et al., Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

December 22, 2016

Facts: Claimant sustained a compensable injury to his head and face. He was unable to use his left hand due to a cognitive impairment and was classified with a permanent total disability. In 2011, the carrier alleged that claimant had violated Workers' Compensation Law §114-a and produced video surveillance of claimant performing certain activities at his father's gas station in 2008 and 2010. The WCLJ found that claimant misrepresented his work status to his doctors, the carrier and the Workers' Compensation Board, violating §114-a and disqualified him from receiving future benefits. The Board reviewed and found that claimant had not violated Workers' Compensation Law §114-a and reinstated benefits. The carrier appeals.

Holding: *Affirmed.*

Discussion: The issue on appeal was whether claimant violated Workers' Compensation Law §114-a, which in pertinent part, provides that, "[i]f for the purposes of obtaining compensation... or for the purpose of influencing any determination regarding any such payment, a claimant knowingly makes a false statement or representation as to a material fact, such person shall be disqualified from receiving any compensation directly attributable to such false statement or representation." The Court noted that the Board is the sole arbiter of witness credibility, and its determination as to whether a claimant violated Workers' Compensation Law §114-a will not be disturbed if supported by substantial evidence. (see Matter of Petrillo v Comp USA, 131 AD3d 1282, 1283 [2015]).

The claimant testified that: he lives with his parents and is dependent on them, does minor therapeutic tasks at the gas station, requires assistance from staff to complete said tasks, doesn't have any specific duties, and he is not required to be there. The claimant's father testified: claimant is encouraged to visit to stay active and social, claimant is not an employee and does not get paid. In addition, to the testimony of the claimant and the claimant's father, the Court noted a lack of evidence demonstrating that claimant attempted to conceal his activities or mislead his physicians to obtain benefits. Therefore, the Board was entitled to credit the hearing testimony of the claimant and his father and was correct in finding that claimant did not barter his services in exchange for room and board at his parent's home. The Court noted that the parents only provided for their son's needs and well-being.

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