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Supreme Court, Appellate Division, Third Department, New York

In the Matter of ROBERT DAVIS, Appellant,

v.

BLACKHORSE CARRIERS, INC., Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

September 29, 2016

Facts: This is an established case to the lower back and the claimant was awarded benefits from 1/14/08 to 3/1/08 and from 3/13/08 to 9/7/10. The claimant was convicted of criminal sale of controlled substances on 9/7/10 and was sentenced to three years in prison. The carrier raised 114-a based upon the claimant's prior testimony at a 6/30/10 hearing that he had not received any income while receiving wage replacement benefits. At a hearing, the WCLJ found the claimant violated 114-a by testifying that he had not received any income while receiving wage replacement benefits when he had already been convicted for criminal sale of controlled substances. The Law Judge imposed a mandatory penalty rescinding awards from 5/29/09 to 9/7/10 and a discretionary penalty disqualifying the claimant from any future wage replacement benefits. Upon appeal, the Board Panel affirmed the discretionary penalty but modified the mandatory penalty to rescind awards only for the period of 6/30/10 to 9/7/10. The claimant appealed.

Holding: Affirmed.

Discussion: Inasmuch as the Board is the sole and final arbiter of witness credibility and entitled to reject claimant's exculpatory testimony that his criminal activity was not work, the Board's determination that claimant violated WCL 114-a (1) by making a false misrepresentation regarding material facts for the purpose of obtaining wage replacement benefits is supported by substantial evidence. The

court also rejected the claimant's argument that his due process rights were violated because he was not provided with adequate notice of the false statement and did not have a fair opportunity to prepare for his testimony. The Court affirmed the Board's decision regarding the mandatory penalty since such benefits were directly attributable to the claimant's knowing misrepresentation of a material fact and affirmed the discretionary penalty based upon the nature of the claimant's misrepresentation and egregious conduct.

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