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Supreme Court, Appellate Division, Third Department, New York

In the Matter MATT PAPADAKIS, Appellant
v.
FRESH MEADOW POWER NE, LLC, et al, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

Decided December 20, 2018

Facts: The Carrier raised a Section 114-a based on various statements claimant gave to an independent medical examiner concerning his restrictions in activities of daily living based on neurological, neuropsychiatric and psychiatric symptoms. These statement were contrary to video surveillance showing that claimant could perform various physical activities without any apparent difficulty. The Law Judge found that Section 114-a was applicable to claim and that decision was affirmed by the Board. This appeal ensued.

Holding: Affirmed.

Discussion: The Court found the applicability of Section 114-a was a question of fact based on substantial evidence and the Board's decision would not be disturbed. However, the case was referred back to Board for an explanation as to why the discretionary penalty of disqualification was appropriate as the Board decision did not include this.