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DONALD R. STEWART (1949-2021)

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Supreme Court, Appellate Division, Third Department, New York

Matter of MANUEL RODRIGUEZ, Appellant

v.

AMERICAN BRIDGE CO., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

February 16, 2023

Facts: Following a 2018 accident, a claim was established for injuries to the neck, back, left hip, left shoulder, depression and pain disorder. The claimant testified at 3 hearings between May 2020 and January 2021 that he has not done any work or volunteer work during the relevant time periods since the accident. The carrier raised fraud having noted the claimant has been working as a constable and was reelected to that position in 2019 in Pennsylvania. The claimant alleged since the injury he has not done any of his constable duties other than working the election polls as a paid poll watcher. The judge initially found a mandatory Section 114-a violation in January 2021 and continued the case on the issue of a discretionary penalty, and that decision was not appealed. The judge subsequently imposed a discretionary penalty barring all future indemnity benefits, at a hearing on March 1, 2021. On appeal from that decision, the Board held the claimant failed to timely appeal the initial determination of a Section 114-a violation and affirmed the judge. The claimant appealed from that part of the decision directing a discretionary penalty to the Court.

Holding: *Affirmed*

Decision: The Court considered the claimant's argument that and appeal from the January 2021 decision was interlocutory and rejected same. It held that while "piecemeal review of the main issues in workers' compensation claims has been discouraged to prevent dilatory appeals, that policy is not applied so as to preclude, as in this

case the prompt review of “threshold legal issue[s]” which may be dispositive of a claim, such as whether claimant violated Workers’ Compensation Law Sect. 114-a(1)”(citations omitted).” The Court did go on to discuss the claimant’s actions and testimony. It was confirmed that the claimant did more than act as a mere poll watcher. He attended election meetings, ran for reelection, attended 20 hours of annual training, 40 hours of firearm training and deducted related expenses from his income taxes and performed other unpaid, volunteer services.

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