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Supreme Court, Appellate Division, Third Department, New York

In the Matter of ANTONETA FETAHAJ, Appellant

v.

STARBUCKS CORPORATION, Respondent

WORKERS' COMPENSATION BOARD, Respondent.

November 17, 2016

Facts: The claimant and a coworker were requested by employer to take a portable bin of garbage to the basement to empty into receptacle. Incident reports completed by claimant and coworker state claimant was injured when coworker moved bin without realizing that claimant was leaning against it causing claimant to fall. Surveillance video showed claimant's fall was due to coworker grabbing claimant by legs and lifting them up as she leaned against the bin causing the bin to move and claimant to fall and hit her head. When confronted with the discrepancy, coworker admitted providing false information while claimant stated she could not recall how injury occurred. Claimant and her coworker's employment were terminated for providing false information and claimant filed a claim under Section 120 of the Workers' Compensation Law for retaliatory discharge. Following a hearing Workers' Compensation Law Judge denied this claim finding claimant was discharged for providing false information to employer and not for retaliation of filing workers compensation claim. The Workers' Compensation Board affirmed and the claimant now appeals to the Court.

Holding: *Affirmed.*

Discussion: Section 120 of the Workers Compensation Law states "It shall be unlawful for any employer or his or her duly authorized agent to discharge... or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer." "The burden of proving a retaliatory discharge in violation of the statute lies with the claimant" who must

demonstrate “a causal nexus between the claimant’s activities in obtaining compensation and the employer’s conduct against him or her.” Finally, while Workers Compensation Law Section 120 was enacted to protect employees against employer retaliation, it was not intended to shield employees from discharge due to their own misconduct.

*Stewart, Greenblatt, Manning & Báez*