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Supreme Court, Appellate Division, Third Department, New York

In the Matter of MIA HOWARD, Appellant

v.

FACILITIES MAINTENANCE
CORPORATION. et. Al, Respondents.

WORKERS' COMPENSATION BOARD, Respondent.

October 6, 2016

Facts: This is an established case for injuries to the neck and back. In May of 2014, the carrier raised 114-a based upon surveillance. The WCLJ found a violation of 114-a, imposed a mandatory penalty and disqualified the claimant from receiving future benefit payments. The Board Panel modified the decision by setting the mandatory forfeiture period between December, 2013 and October 2014 and otherwise affirmed. The claimant appealed.

Holding: Affirmed.

Discussion: The medical records between October 2013 and April 2014 indicate that due to the claimant's injuries, her mobility was limited in that she was homebound and spent most of the day in bed. The surveillance between November 2013 and March 2014 shows the claimant driving, shopping and ambulating normally. Although the claimant alleged that she accurately reflected her condition to the doctors, this created an issue of credibility for the Board to decide. The Board's decision that the claimant violated 114-a as well as the penalties is supported by substantial evidence.