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Supreme Court, Appellate Division, Third Department, New York

In the Matter of LUIS VAZQUEZ, Appellant

v.

SKUFFY AUTO BODY, et al, Respondents

and

WORKERS' COMPENSATION BOARD, Respondent.

Decided January 17, 2019

Facts: The claimant had an established claim and received benefits. Eventually they were suspended and he requested their reinstatement. At that time, the carrier raised a violation of WCL Section 114-a in that the claimant had not disclosed work activity. After testimony, the Law Judge found there was no violation. However, on appeal the Board Panel found that there was and barred the claimant from all future indemnity payments. This appeal ensued.

Holding: Affirmed.

Discussion: In affirming the Board's decision, the Court noted that the claimant had multiple opportunities to disclose his work activity but failed to do so. The claimant's explanation of his omissions and his work activity presented a credibility issue for the Board to resolve, which it did. The Court also found that the Board did not abuse its discretion in imposing a discretionary penalty of forfeiture of all future indemnity benefits as the claimant's actions were egregious.