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In the Matter of ROBERT STROHSCHNEIN, Appellant

v.

SAFE SPAN PLATFORM SYSTEMS, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

July 7, 2022

Facts: This is an appeal from the decision which ruled that the claimant violated Workers' Compensation Law Section 114-a and permanently disqualified the claimant from any additional indemnity benefits. The claimant filed a claim for injury to the right bicep. The claim was initially controverted and after hearings, the case was established for right bicep tendon tear. It was then amended to include nerve palsy of the right upper extremity. The carrier raised the issue of attachment to the labor market and disclosed that it possessed surveillance videos and photographic evidence in support of a claim that the claimant had violated Section 114-a by misrepresenting his medical condition to the independent medical examiners. Subsequent hearings were held with testimony and the Judge found the claimant's testimony demonstrated an attachment to the labor market and that there was insufficient evidence the claimant had violated Section 114-a. The Board modified the decision finding the claimant had violated 114-a by misrepresenting and exaggerating his complaints to physicians and assessing mandatory penalty of forfeiture of benefits. The Board also found the claimant did not demonstrate an attachment to the

labor market and failed to produce sufficient evidence of diligent, timely and persistent work search. The claimant appeals.

Holding: *Affirmed.*

Discussion: The Court noted that in order to support a determination of a violation of Section 114-a, there must be evidence to show the claimant knowingly made false statements or representations as to a material fact and if so, the claimant can be disqualified from receiving compensation directly attributable to the false statement or representation. An omission of material information may also constitute a knowing false statement or misrepresentation. The determination of whether the claimant violated Section 114-a is within the providence of the Board and the determination will not be disturbed if supported by substantial evidence. The Court reviewed the testimony of the independent medical examiner as well as treating doctors and the claimant's own testimony and noted that given the patent inconsistencies between the medical narratives and what the surveillance evidence uncovered, clearly the claimant feigned the extent of his disability and/or exaggerated his symptoms during the independent medical examination in question. This would be substantial evidence to support the Board's determination of a violation of Section 114-a. Regarding the penalty that was assessed, the Court noted the Board explained the basis for the penalty and the reasons for the finding of egregious conduct were sufficiently outlined and the Court found no abuse of the Board's discretion in permanently disqualifying the claimant from future indemnity benefits.

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