

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)

KAFI WILFORD (2003-2010)

MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of MICHAEL SPINELLI, Respondent

v.

CRICKET VALLEY ENERGY CENTER, Appellant

and

AMERICAN ZURICH INSURANCE COMPANY, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

June 23, 2022

Facts: Appeal from decision of Workers' Compensation Board filed December 1, 2020 wherein the claimant was found not to have violated Section 114-a of the Workers' Compensation Law. In this case, the claim is established for the right shoulder, neck, right forearm and consequential injury to the left shoulder. The claimant received benefits. The carrier raised the issue of a violation of Section 114-a but did not make an offer of proof at the time it was raised. The Judge ultimately found there was a violation in that the claimant misrepresented material facts by failing to disclose prior injuries and imposed mandatory and discretionary penalties. The Board rescinded the part of the decision finding a violation of the Workers' Compensation Law Section 114-a and penalties and the carrier appealed.

Holding: *Affirmed.*

Discussion: The Court noted that whether a claimant violated Section 114-a is within the province of the Board which is the sole arbiter of witness credibility and if there is substantial evidence, the decision will not be disturbed. In this case, the Court noted the claimant reported to doctors that his past medical history included left knee surgery and a broken right wrist but that he denied having prior problems with the right shoulder, right forearm or neck. When the claimant was questioned regarding these sites and Workers' Compensation injuries in 2016 and also two motor vehicle accidents in 2015 and 2010 as well as a fall in 2011, the claimant testified that he did not recall such injuries. The claimant noted that nothing significant occurred and he continued to work without any problems. The claimant explained that he had considered an injury to require some type of treatment and the Board found the claimant's explanation plausible as to why he did not disclose the prior injuries and therefore, the Court chose not to disturb the Board's finding.

Stewart, Greenblatt, Manning & Book