

STEWART, GREENBLATT, MANNING & BAEZ

RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
NICOLE A. SUISSA
JONATHAN R. BAEZ
DIANE P. WHITFIELD

ROBERT W. MANNING
MADGE E. GREENBLATT
RETIRED

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1976-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

MARIA E. CRETA
JAMES MURPHY
MONICA O'BRIEN
NABISUBI MUSOKE
SACHEE N. ARROYO
OF COUNSEL

State of New York Court of Appeals

In the Matter of the Claim of

RONALD WINKELMAN, Claimant,

v.

SUMITOMO RUBBER USA et al., Appellants

WORKERS' COMPENSATION BOARD, Respondent.

June 20, 2024

Facts: In June 2000, the claimant was involved in a work-related motor vehicle accident with established injuries to the neck and upper back. In May 2018, the claimant tripped and fell at work injuring his lower back and knees. The claimant was under active treatment but continued working for the employer of record until October 7, 2021. A claim for causally related lost time was made as of October 7, 2021. The claimant's medical providers issued reports saying the claimant had a 75% disability with a 10-15 pound weight restriction. The claimant did disclose that he had done some per diem employment in December of 2021 through January 26, 2022. Although the claimant was cleared to return to work in March of 2022, the employer terminated the claimant's employment that same month. The carrier raised a violation of 114-a as they secured video surveillance of the claimant which depicted the claimant lifting and moving boxes. The WCLJ did not find a violation of 114-a as the weight of the boxes were unknown and he did not believe the claimant's activities violated the restrictions of his own medical providers. The WCLJ found the claimant entitled to reduced earnings.

Holding: *Affirmed.*

Discussion: The Court found substantial evidence to affirm the findings of the WCLJ. On the lack of a 114-a violation, the Court cited it was within the province of the Board to conclude that "sporadic, incidental and uncompensated assistance to one's spouse" was insufficient to give rise to an intentional misrepresentation for purposes of a Workers' Compensation Law § 114-a violation. On the issue of reduced earnings, the Court cited the claimant's attempts to return to work with the employer, as well as subsequent per diem

employment endeavors and job search and was satisfied that the Board's reduced earnings determination was supported by substantial evidence.

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