

STEWART, GREENBLATT, MANNING & BAEZ

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

ATTORNEYS AT LAW
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

In the Matter of VINCENT GUARANTA, Appellant
v.
SPECIAL TEAMS, INC. et al, Respondents

WORKERS' COMPENSATION BOARD, Respondent

Decided June 24, 2021

Facts: Appeal from decision which ruled the claimant violated Workers' Compensation Law Section 114-a.

The claimant had an established case for injuries to the right hip, right groin and back as well as consequential left shoulder injury and adjustment disorder. The employer and carrier cited surveillance video footage in its possession for the proposition the claimant knowingly made material misrepresentations in order to obtain benefits in violation of Workers' Compensation Law Section 114-a. The Judge found, after reviewing video footage, that the claimant had not violated Workers' Compensation Law Section 114-a. The Board disagreed and imposed a mandatory penalty and a discretionary penalty permanently disqualifying the claimant from receiving wage replacement benefits. The claimant appeals.

Holding: *Affirmed.*

Discussion: The Court noted that a claimant who, for the purpose of obtaining disability compensation or influencing a determination relative thereto knowingly makes a false statement or representation after material fact shall be disqualified from receiving any compensation directly attributable to such false statement or misrepresentation. In the instant case, again there was a comparison made between the independent medical examiner's opinion prior to doing surveillance and his opinion subsequent to reviewing

surveillance. The Court noted that what was viewed on the video suggested the claimant feigned the extent of disability and exaggerated symptoms. It noted that this would support the Board's determination that the claimant knowingly made material misrepresentations in violation of Section 114-a and that this certainly constituted substantial evidence. The Court also noted that the claimant's behavior was egregious to the extent that the use of a cane at multiple independent medical examinations certainly constituted an effort to mislead the examining doctor as to the severity of the disability.

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