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Supreme Court, Appellate Division, Third Department, New York

In the Matter of NORMAL RINGELBERG, Appellant
v.
JOHN MILLS ELECTRIC, INC., Respondents

WORKERS' COMPENSATION BOARD, Respondent

Decided June 24, 2021

Facts: Appeal from Workers' Compensation Decision which ruled that the violated Workers' Compensation Law Section 114-a and disqualified him from receiving future indemnity benefits.

The claimant had an established claim for injuries to the back, groin and neck, which was established in August of 2008. In December 2017, during a hearing, employer's Workers' Compensation carrier disclosed that it had carried out surveillance and raised the issue as to whether the claimant had violated Section 114-a of the Workers' Compensation Law. After several hearings, the Judge found the claimant violated Section 114-a and assessed a mandatory penalty of forfeiture of benefits for the period from October 5, 2017 to April 10, 2018. Upon Board Review, the Workers' Compensation Board modified that determination to include discretionary penalty of disqualification of claimant from receiving future benefits. The claimant appeals.

Holding: *Affirmed.*

Discussion: The Court noted that Workers' Compensation Law Section 114-a provides that a claimant who, for purposes of obtaining disability compensation, or to influence any determination related to the payment thereof, knowingly makes a false statement or representation as to a material fact...shall be disqualified from receiving any compensation directly attributable to such false statement or representation. The Court went on to note that

feigning the extent of disability or exaggerating symptoms and/or injuries have been found to constitute materially false representations within the meaning of the statute. The Court noted that whether the claimant violated Section 114-a is within the province of the Board which is the sole arbiter of witness credibility and the decision will not be disturbed if supported by substantial evidence. The Court noted in the instant matter, a medical report from a neurosurgeon who examined the claimant on behalf of the carrier, found a 75% temporary partial disability and gave limitations that the claimant could do part-time work with a ten-pound lifting limit. Another examination was performed by the same doctor and it was noted that the claimant declined to cooperate with examination and perform toe, heel and tandem walking and the doctor noted the claimant walked stooped over, with a slow, deliberate gait while using a cane. Surveillance was then secured on the day of the doctor's medical examination which showed the claimant going into and coming out of the doctor's office stooped over walking very slowly using a cane and wearing a back brace. Approximately 45 minutes after leaving the doctor's office, the claimant is shown in the video in the parking lot of a store walking in an upright position at a normal pace without the use of a cane and no back brace. The claimant was also seen pushing a shopping cart and getting in and out of the driver's seat of another automobile without difficulty and driving away. There was additional surveillance reviewed. The claimant did not use a cane for any of that. The claimant gave an explanation that his condition fluctuates. It was noted that when the independent medical examiner reviewed the surveillance material, he changed his opinion from temporary total to moderate.

The Court noted that based on the evidence available, the Board's conclusion that the claimant's embellishment of his condition to the medical examiner was egregious, the Court could not conclude that the imposition of a discretionary penalty of permanent disqualification from future wage replacement benefits is disproportionate to the claimant's material misrepresentations.