

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 MATTHEW SEEBER, Appellant

v.

CITY OF ALBANY POLICE DEPARTMENT et al, Respondents

WORKERS' COMPENSATION BOARD, Respondent

Decided and entered June 17, 2021

Facts: Appeal filed from decision of Workers' Compensation Board which ruled the claim for claimant's work-related stress and post-traumatic stress disorder was barred by Workers' Compensation Law Section 2(7).

Claimant, a police officer, responded to a call in March 2019 that resulted in an arrest of three individuals. The claimant was interviewed about the incident as part of an Internal Affairs investigation and the following day, the claimant was suspended from his employment. The claimant thereafter sought mental health treatment stemming from the incident that resulted in his suspension and filed a Workers' Compensation claim for stress, anxiety and post-traumatic stress disorder. The Judge determined that the claim was not compensable as the claimant's psychological injury was "a direct consequence of lawful personnel decision involving a disciplinary action" as defined by Section 2(7) of the Workers' Compensation Law. The claimant appealed and the Board affirmed the decision of the Workers' Compensation Board.

Holding: *Affirmed.*

Discussion: The Court found that the claimant argued the Board's decision was not supported by substantial evidence because his suspension does not constitute a disciplinary action or other enumerated personnel action as set forth in the Workers' Compensation Law Section 2(7). The Court further found that this contention was not supported by the

record as developed as the claimant argued both at the administrative level and in the Application for Board Review that his suspension did in fact constitute a disciplinary action. The first time the claimant was advancing this argument was in the instant Appeal and therefore, the claim was not preserved for review.

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