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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

MATTHEW ROSARIO, Claimant

v.

CONSOLIDATED EDISON CO OF NEW YORK ET AL, Appellant

and

WORKERS' COMPENSATION BOARD, Respondent

July 18, 2019

Facts: This case involves an Appeal from a finding that the claimant did not violate Workers' Compensation Law, Section 114-a. The claimant was employed as a mechanic and had to use pneumatic tools such as jack hammers, pavement breakers and rock drills. He filed a claim for repetitive stress injuries to the hands, elbows, shoulders and wrists. The case was established for an occupational disease of tendonitis and neuropathy to the bilateral elbows, forearms and wrists with a date of disablement of February 2, 2013. Litigation ensued regarding the issue of permanency. The issue of a violation of Section 114-a was raised. After hearing testimony and reviewing video surveillance, the Judge concluded the claimant exaggerated the extent of his injuries and violation of Section 114-a and permanently disqualified the claimant from receiving benefits. An Appeal was filed with the Board and the Board disagreed with the Judge's finding, noting the claimant did not make a willful misrepresentation and therefore did not violate Section 114-a. The case was then returned for the issue of decision on schedule loss of use. The carrier filed an Appeal.

Holding: *Affirmed.*

Discussion: The Court noted that regarding Workers' Compensation Law Section 114-a, this section provides that a claimant who, for the purpose of obtaining disability, compensation or to influence any determination related to the payment thereof,

knowingly makes a false statement of representation as to a material fact shall be disqualified from receiving any compensation directly attributable to such false statement or representation. This would include exaggeration of his or her symptoms. The Court focused on medical evidence presented during the litigation in this matter. The medical evidence suggested that the claimant suffers from an unusual affliction affecting his hands whereby the claimant has an inability to fully extend his fingers without pain. The Court took into account the opinions of the treating physician. The Court also reviewed the testimony of the IME doctor. There was also review of the video tape of the IME which confirmed the claimant presented with the fingers of both hands in a clenched position but that video tape did not reveal that the IME doctor made much of an attempt to manipulate them or indicate that the claimant was trying to exaggerate his symptoms. The video surveillance was of limited value and did not show the claimant engaged in activities inconsistent with the medical restrictions. The differing opinions of the two doctors on whether the claimant's symptoms are feigned or real was a credibility issue for the Board to resolve. The Court noted that the record does not establish the claimant deliberately overstated his symptoms for the purpose of obtaining a schedule loss of use and therefore found substantial evidence supported the Board's determination and the decision was affirmed.

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