

STEWART, GREENBLATT, MANNING & BAEZ

**ATTORNEYS AT LAW
6800 JERICHO TURNPIKE**

**SUITE 100W
SYOSSET, NY 11791**

**516-433-6677
FAX 516-433-4342**

**KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)**

**RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL**

**DONALD R. STEWART (RET.)
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
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO**

Supreme Court, Appellate Division, Third Department, New York

In the Matter of

CARLOS GARCIA, Appellant

v.

MCI INTERIORS, INC., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

June 27, 2019

Facts: The Workers' Compensation Board ruled that the claimant sustained a causally related occupational disease resulting from repetitive physical stress and established the date of disablement of March 24, 2015. The Board suspended the payment of awards pending development of the record regarding whether the claimant was attached to the labor market. The Board indicated that the issue was attachment to the labor market as of the date of disablement "such that he had wages to lose as a result of his causally related disability." The employer and carrier appealed the Board's decision and the Appellate Division affirmed. A hearing was then held regarding the issue of attachment to the labor market and the Law Judge found the claimant was attached to the labor market until December 19, 2014 and was awarded benefits from March 24, 2015 forward at a temporary total rate. An Appeal was filed and the Board rescinded the awards based upon its finding that the claimant had stopped working for reasons unrelated to his occupational disease and he had not reattached himself to the labor market. The claimant appealed.

Holding: Affirmed.

Discussion: Whether the claimant had voluntarily withdrawn from the labor market is a factual issue and the Board's determination of that issue will not be disturbed if

supported by substantial evidence. The claimant testified that he informed his employer of the work-related injury and that he provided a note to the employer from the treating doctor, Dr. Kim. However, Dr. Kim testified that he began treating the claimant in January, 2014 and that he believed the claimant was unemployed during the entire time he was treating the claimant and he never advised the claimant to stop working. The employer testified that the claimant would be periodically hired through his Union to do construction work and that the claimant stopped doing work for the employer on November 14, 2014 and both witnesses testified the claimant was laid off on that date because the project he had been working on finished up. There was no other work for him. The claimant had a spinal cord stimulator surgically implanted on December 19, 2014. The claimant presented testimony and documentary evidence that he worked for another employer during the two weeks prior to his surgery. However, the evidence did not indicate the claimant stopped working for that employer due to a work-related disability and none of the medical providers that had testified advised that they told the claimant to stop working. The Court indicated that given the Board's authority to resolve factual issues based upon witness credibility that substantial evidence supported the Board's determination that the claimant's loss of employment was not due to a work-related disability. Since the claimant had left his employment for reasons other than work-related disability prior to the date of disablement and had not sought employment since the surgery, the Court found that the record lacked proof of causally related reduced earnings.

Stewart, Greenblatt, Manly & Pevz