

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER

LISA LEVINE
ASHA V. EDWARDS
ANDREA L. De SALVIO
KRISTY L. BEHR
DAVID S. FOODEN
LUKE R. TARANTINO
THOMAS A. LUMPKIN

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

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN

OF COUNSEL

Supreme Court, Appellate Division, Third Department, New York

In the Matter of FERN H. LEISING, Respondent,

v.

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT et al., Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

October 20, 2016

Facts: The claimant began receiving compensation payments in 2010. The carrier raised a violation of 114-a based upon the claimant's failure to disclose her part-time employment at a golf course. The WCLJ found a violation of 114-a. The WCLJ did not impose a mandatory penalty as the earnings were negligible but imposed a mandatory penalty of lifetime disqualification of benefits. The Board Panel reversed because it did not find the intentional misrepresentation to be material. The Board denied the application for Full Board Review. However, the Board issued an amended decision in December of 2014 stating that instead of there being a lack of materiality, they found insufficient evidence existed to show that the claimant attempted to conceal her part-time employment. The employer and carrier appeal.

Holding: Reversed and remitted for proceedings not inconsistent with the Court's decision.

Discussion: A claimant may be disqualified from receiving benefits if for the purpose of obtaining compensation, or for the purpose of influencing any determination regarding such payment, he or she knowingly makes a false statement or representation as to a material fact." The Court found a lack of substantial proof to support the Board's amended decision. The Court looked at questionnaires completed by the claimant and her attorney's office, medical notes that indicate the claimant was not working, as well as a telephone call made by the claimant to the adjuster with a caller ID of Par 3 golf course. An investigator was also sent to the golf course with recorded video surveillance and the

report stated that the claimant had reported working there for four years. The Court noted that in this case, the claimant was employed during the summers of 2010-2012 and never affirmatively disclosed such employment and in fact, denied any employment activity. The Court ordered remittal to the Board to determine whether claimant's failure to disclose her seasonal work was material and done both knowingly and for the purpose of obtaining benefits.

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