

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

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

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 the Claim of Fredrick MITCHELL, Appellant,

v.

WASTEQUIP, INC et al., Respondents,

and

WORKERS' COMPENSATION BOARD, Respondent.

March 3, 2022

Facts: The claimant was initially found to have a permanent partial disability and was later reclassified with a permanent total disability, but the Law Judge continued the matter for development of the record regarding a potential WCL §114-a violation. Subsequently surveillance videos were shown, and the claimant was found to have violated §114-a for misrepresenting his condition as part of his effort to be reclassified with a permanent total disability. In addition, he was found to have permanently forfeited future indemnity benefits. The claimant appealed and the Board Panel affirmed the Law Judge's decision and the claimant was subsequently reclassified with a permanent partial disability.

Later, the claimant requested a reopening in the interest of justice and allegedly newly discovered evidence. The Board denied reopening noting that the claimant's alleged newly discovered evidence was not supported by affidavits and was merely newly created evidence and no explanation was offered as to why this could not have been offered during the original litigation. The claimant appeals.

Holding: *Affirmed.*

Discussion: The Court noted initially that, because the claimant did not appeal the Board's initial finding that he had violated §114-a, that issue was not before it. This being the case, the only issue the Court had to address was whether or no the Board abused its discretion by not reopening the claim. Here, the alleged newly discovered evidence was not supported by affidavits, as required by law, nor was any explanation offered as to why this evidence could not have been submitted initially. Accordingly, the Board did not abuse its discretion in refusing to reopen the case.

Stewart, Greenblatt, Manning & Báez