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Supreme Court, Appellate Division, Third Department, New York

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of THOMAS HOGAN, Appellant

v.

CBS TELEVISION STATIONS, Respondent

and

WORKERS' COMPENSATION BOARD

May 26, 2022

Facts: Claimant sustained an injury to a finger. Shortly after the date of the accident the claimant, a freelance per diem employee, was terminated. He filed a discrimination complaint under Section 120 alleging that he was discharged in retaliation for filing his Workers' Compensation claim. Following a trial, a finding was made that the employer had violated Section 120. The employer appealed and the Workers' Compensation Board reversed the decision finding that the claimant did not meet his burden of establishing a violation of Workers' Compensation Law Section 120. A subsequent decision by the Board denied the claimant's Request for Reconsideration or Full Board Review.

Holding: *Affirmed.*

Discussion: After citing claimant's burden of proof in a Section 120 claim, the Court held that the claimant had offered conflicting testimony regarding when he was informed of his termination. The Court indicated that the Board was entitled to credit the testimony of

the employer's witnesses regarding the injury and the lack of any relationship between the injury and the termination of his employment.

*Stewart, Greenblatt, Manning & Báez*