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State of New York Court of Appeals

In the Matter of the Claim of

DAVID BROWN Claimant,

v.

VAN LINER INSURANCE CO. et al., Appellants,

And

MICHAEL J. CRONIN, INC., Respondent.

WORKERS' COMPENSATION BOARD, Respondent.

May 30, 2024

Facts: Claimant filed for workers' compensation benefits for work related injuries to the neck, back, and right wrist, and later adding additional injury sites to the right hip. In June 2021, Carrier alleged fraud against the Claimant for failure to disclose previous motor vehicle accident history. At the conclusion of a later hearing, Claimant alleged Carrier raised frivolous issues and committed fraud by submitting contradictory payroll reports. In an October 2021 decision, The Workers' Compensation Law Judge ("WCLJ") then directed the Carrier to provide separate legal counsel for the employer with regard to the Claimant's fraud issue. Carrier appealed. In a March 2022 decision, the WCLJ found the Claimant committed fraud in violation of Workers' Compensation Law ("WCL") § 114-a by intentionally failing to disclose prior accidents and receiving indemnity benefits for a disability while working. The Claimant appealed.

The Panel denied review of Carrier's appeal regarding the need to provide separate counsel for the employer because it failed to preserve this issue by noting an objection at the hearing. The Panel further found no WCL § 114-a violation by Claimant and amended the claim to include injuries to the neck, back and right wrist. Likewise, the Panel found no WCL § 114-a violation by the employer and reversed the WCLJ's finding. Carrier appealed.

Holding: *Affirmed.*

Discussion: Regarding the amendment of the claim to include additional sites, the Court held that the Board is empowered to determine factual issues based upon the record. The Court does not interfere with the Board's findings if they are supported by substantial evidence. The Board is also empowered to make credibility assessments, which the Court does not generally disturb.

With regard to the finding that Claimant did not violate WCL § 114-a, the Court determined that while Claimant did not disclose his previous accident history on his C-3 form, he did disclose the same on his claim form and referenced the prior accidents and injuries when he was examined by consultants, therefore demonstrating a lack of intent to defraud to obtain benefits.

Lastly, the Court affirmed the Board's denial of review of Carrier's appeal of the Board's October 2021 decision because the Carrier failed to interpose or state an objection to the WCLJ's ruling on the record. The record further reflected the Carrier's consent to this ruling, thereby precluding further review as the issue was left unpreserved.

Stewart, Greenblatt, Manning & Paez