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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

AUSTIN ALLAN MARKEY, Respondent,

v.

AUTOSAVER FORD, Appellant,

WORKERS' COMPENSATION BOARD, Respondent.

March 16, 2020

Facts: The claimant was working as a general manager at an automobile dealership when he slipped and fell. He lost consciousness and was hospitalized. He notified the employer that he would be filing a claim noting he would require surgery for the injuries. The claimant was fired about two weeks after the accident. The claimant alleged that he was fired in retaliation for advising that he would be filing a workers' compensation claim. After a hearing a Law Judge agreed that in accordance with Section 120 the claimant had fulfilled the burden of showing that the employer had retaliated against him for filing a claim. The Law Judge further held that the employer had failed to establish a valid business reason for firing the claimant. On appeal the Board affirmed.

Holding: Affirmed.

Discussion: Here the Board is the sole decider concerning witness credibility and found the claimant to be more credible than the employer. The Board determined that the Law Judge relied on substantial evidence to find that the employer had violated Section 120 and for these reasons the Court affirmed the Board's decision.