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Supreme Court, Appellate Division, Third Department, New York

BARON PERMENTER, Claimant,

v.

WRS ENVIRONMENTAL SERVICES, INC. et al., Appellants,
and
WORKERS' COMPENSATION BOARD, Respondent

May 30, 2019

Facts: Claimant filed a claim for benefits after being involved in a work-related motor vehicle accident in 2014. During hearings throughout the claim the claimant was questioned about work activities subsequent to the date of the accident. Claimant conceded that he was the owner of an online flower business that he had started prior to the work related accident and had devoted time to this business after his accident. This had not been disclosed by the claimant in connection to his workers' compensation claim. Based on this information the carrier raised a violation of Section 114-a. The WCLJ found that Section 114-a did not apply. The Board Panel affirmed that decision with a dissenting vote. The carrier requested mandatory full Board review. The full Board, in a split decision, upheld the Law Judge and Board Panel's decision. The carrier appealed.

Holding: *Affirmed.*

Discussion: Although claimant testified that he did not continue to work after the date of the accident for his employer or for any other employer and testified subsequently that he continued to work for his flower business at the same amount of time after the accident as before the accident the Court ruled that the Board could reasonably conclude that the claimant did not believe that his ownership interest in the flower business constituted work for the purposes of receiving workers'

compensation benefits and that any misstatements he made with respect thereto were not knowingly made for the purpose of obtaining workers' compensation benefits. The Court deferred to the Board's assessment of the claimant's credibility and found that the Board's conclusion that claimant did not knowingly make a materially false misrepresentation in violation of Section 114-a was based on substantial evidence.

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