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Supreme Court, Appellate Division, Third Department, New York

ROBERT STONE, Respondent,
v.

SAULSBURY/FEDERAL SIGNAL et al., Appellants/Respondents,
and
WORKERS' COMPENSATION BOARD, Respondent

May 30, 2019

Facts: Claimant injured his back in 2002. He was classified with a permanent partial disability apportioned equally between this claim and a previous back claim. Claimant was incarcerated in 2016 after being convicted of unlawful manufacture of methamphetamine in the third degree. Claimant's indemnity benefits were suspended while he was incarcerated. Upon release, claimant requested reinstatement of his indemnity benefits. Carriers in both cases objected to reinstatement and raised Section 114-a. The WCLJ found that the claimant had not made any false statements regarding work activity and directed that benefits be reinstated. The Board affirmed. Carriers appealed.

Holding: *Affirmed*

Discussion: Court held that the Board is the sole arbiter of witness credibility and its determination as to whether the claimant was in violation of Section 114-a would be upheld if supported by substantial evidence. Court held that the elements of the crime for which the claimant was convicted does not require that any work be performed. Therefore, substantial evidence supported Board's decision that conviction alone was insufficient to establish work activity. Carriers also argued that during the criminal trial testimony had been given that claimant had been hired to remove debris from a property after a fire. Testimony was not credited

by the jury and did not have to be accepted by the Board as evidence of work activity.

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