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Supreme Court, Appellate Division, Third Department, New York

Matter of JOHN HARRISON, Respondent,

v.

TOWN OF CHEEKTOWAGA et. al., Appellants

and

WORKERS' COMPENSATION BOARD

Decided November 16, 2017

Facts: Parties stipulated in 2010 to a PPD and 90% loss of wage earnings capacity. Claimant then returned to work in Arkansas with reduced earnings and his benefit rate was reduced. In 2014, the claimant was terminated from his job and he reopened his claim on a change in condition. Claimant appeared by telephone at 2 hearings without representation, initially alleging that his injuries prevented him from working and then that he was terminated for cause but then retired from his position with a pension. Employer raised Section 114-a(1). WCLJ found no intentional misrepresentations. Board Panel agreed but rescinded awards pending further development of the record on the claimant's entitlement to benefits on labor market attachment. Employer's request for Full Board Review was denied and it appealed.

Holding: *Affirmed.*

Discussion: Court determined that Board is sole arbiter of witness credibility and that even it could have ruled in an opposite fashion, Board's acceptance of claimant's lay interpretation of facts was acceptable and therefore decision was by substantial evidence.