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Supreme Court, Appellate Division, Third Department, New York

In the Matter of MANUEL ORTIZ, Appellant
v.

CALVIN MAINTENANCE et al, Respondent
and
WORKERS' COMPENSATION BOARD, Respondent

November 18, 2021

Facts: Appeal from a decision of the Workers' Compensation Board filed March 23, 2020 which ruled that claimant violated Workers' Compensation Law Section 114-a and disqualified him from receiving future indemnity benefits.

The claimant herein had two work-related injuries, the first one in 2009 when he was employed as a laborer, which was established for injuries to the head, neck, and back and later amended to include a consequential psychiatric condition. In 2012, a Workers' Compensation Law Judge ruled that the claimant had no further causally related disability subsequent to July 28, 2012, which was appealed resulting in the Board Panel affirming the Judge's decision. This claim was not pursued further.

In June 2013, the claimant sustained another work-related injury when a light fixture allegedly fell on him which was established for injuries to the right forearm, right shoulder, neck, back and right elbow and subsequent amended to include left shoulder, adjustment disorder with mixed anxiety and depression and consequential deep vein thrombosis and pulmonary embolism. In 2017, the Workers' Compensation carrier raised Section 114-a based upon the claimant's failure to disclose the prior 2009 injury on his C-3 and to various independent medical examination consultants and attending physicians. The case was litigated on fraud pursuant to Section 114-a resulting in a Law Judge's decision determining that the claimant violated Section 114-a and imposed a mandatory

and discretionary penalty including a forfeiture of all indemnity benefits. The claimant appealed to the Court.

Holding: *Affirmed.*

Discussion: The Court reviewed the applicable law pursuant to Section 114-a and affirmed the Board's finding that the claimant knowingly made material omissions and/or misrepresentations in violation of Workers' Compensation Law Section 114-a. The claimant's contentions were rejected, and the Court determined that the permanent disqualification from future indemnity benefits was not disproportionate to the claimant's offense.

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