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Supreme Court, Appellate Division, Third Department, New York

In the Matter of LAWRENCE SANTANGELO, Appellant
v.
SEAFORD U.F.S.D., et al., Respondent

and

WORKERS' COMPENSATION BOARD, Respondent.

Decided October 11, 2018

Facts: The claimant sustained injuries to the back and right leg. He ultimately underwent a lumbar fusion surgery but had continued complaints of left hip and thigh weakness and pain, requiring the use of a cane. The claimant was classified in 2014 with a permanent total disability. In June 2016, the carrier reopened the case, raising an issue of 114-a based upon surveillance reports and video. The WCLJ found a violation of 114-a which was affirmed on appeal by the Board.

Holding: *Affirmed.*

Discussion: In this case, the claimant's medical records note that he presented with constant pain, required the use of a cane or knee brace daily and was severely impacted in his ability to stand and walk. The surveillance showed the claimant walking without a limp, standing and driving for extended periods of time, bending over to repair a car, and lift items such as a floor jack and car tires. The only time the claimant was documented with a cane or a knee brace was during a medical appointment; however, the claimant was observed the same way walking without a limp and without an assistive device. The Court found that there was substantial evidence of the claimant making false representations regarding material facts and therefore, violating Section 114-a.