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State of New York Supreme Court, Appellate Division
Third Judicial Department
In the Matter of the Claim of

Jose Lujan-Espinzo, Claimant

v.

Electrical Illuminations by Arnold Inc. et al., Appellants
Workers' Compensation Board, Respondent

October 10, 2024

Facts: The claimant was working alone on a ladder bringing items down from an elevated height. The claimant fell eight feet to the floor sustaining serious injuries. A toxicology screening at the hospital revealed he was severely intoxicated at the time of his fall. The carrier controverted the claim asserting that the accident was solely caused by the claimant's intoxication. The Law Judge disallowed the claim at trial based on the claimant giving false testimony with respect to his consumption of alcohol. The case was not disallowed under WCL § 10 based on the claimant's intoxication being the sole cause of the accident. The Board Panel reversed, finding that the claimant's testimony did not warrant disallowance of the claim and that the accident was not solely caused by the claimant's intoxication. The case was restored to the calendar to address sites of injury and entitlement to awards. The Carrier's application for full Board review was denied and the carrier appealed.

Decision: *Affirmed.*

Discussion: The court reviewed the record and noted that while the claimant was severely intoxicated, there were other factors which could have contributed to the claimant's fall such as: 1. The absence of another employee holding the ladder; 2. A misjudgment of footing, 3. The lack of a safety railing on an elevated surface or 4. The inherent risk of working at heights. Because there were contributing factors other than intoxication which reasonably could have contributed to causing the accident the court found the Boards determination was supported by the substantial evidence. The testimony reflected that a co-worker witnessed the

claimant misplacing his foot when he fell. The claimant also testified that usually one person holds the ladder while the other is on it at a height. At the time of the accident, no one was holding the ladder. Finally, one of the medical witnesses testified that while the claimant had a high BAC, the act of carrying something down a ladder increased the risk of a fall, irrespective of alcohol impairment.

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