

**STEWART, GREENBLATT, MANNING & BAEZ**

ATTORNEYS AT LAW

DONALD R. STEWART (RET.)  
MADGE E. GREENBLATT  
ROBERT W. MANNING  
RICARDO A. BAEZ  
DAVID J. GOLDSMITH  
PETER MICHAEL DeCURTIS  
LAURETTA L. CONNORS  
JOHN K. HAMBERGER

6800 JERICHO TURNPIKE

SUITE 100W

SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

KAFI WILFORD (2003-2010)  
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN  
MONICA M. O'BRIEN  
MARY ELLEN O'CONNOR  
OF COUNSEL

LISA LEVINE  
ANDREA L. De SALVIO  
KRISTY L. BEHR  
LUKE R. TARANTINO  
THOMAS A. LUMPKIN  
JONATHAN SO

SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT, NEW YORK

Matter of Gerald J. Kraus, Claimant

v.

Wegmans Food Markets, Inc., Appellant

Decided December 21, 2017

Facts: The Claimant was employed as a workers' compensation claims adjuster for the Employer-Appellant. Beginning in 2010, the employer began a policy that any no-fault claim involving the use of a car would automatically be assigned to a workers' compensation claims adjuster unless the employee raised the issue of additional no-fault benefits. The claimant was inconsistent in applying this policy and began receiving threats for the company's union drivers. He was subsequently fired and filed a claim for a psychiatric occupational disease. A Board Panel ultimately established the case for a causally related accident. It also determined the claimant's equivocal response regarding a medical history from 10 years earlier was not a violation of Section 114-a. After additional hearings and claims of fraud for exaggerating or feigning symptoms, a judge found a violation of 114-a and the Board reversed. Appeals were filed from the decisions finding a causally related psychiatric injury, denying a request of the employer for reconsideration/full Board review, denying a finding of 114-a, and denying an additional request for a rehearing.

Holding: Affirmed.

Discussion: The finding of a psychiatric condition was affirmed based upon substantial evidence. The Court noted the requirement for a work-related stress claim is that the claimant must show "the stress that caused the claimed mental injury was greater than that which other similarly situated workers experienced in the normal work environment." All of the threats including a coworker being barred from the building because of his abuse of the claimant, coupled with medical testimony met that burden.

Regarding 114-a, the Court affirmed the Board noting in part that pursuant to one of the claimant's doctors that the claimant "unconsciously exaggerates his illness...and looks like he is consciously malingering-he is not." In addition, the Carrier failed to preserve any objection to the Board considering this report by failing to timely object to same. Regarding the Board denial of the Carrier's "sur-rebuttal" it was noted that same was untimely. Also, the request for a rehearing was properly denied because the carrier failed to set forth a valid ground for rehearing.

*Stewart, Greenblatt, Manning & Báez*