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Supreme Court, Appellate Division, Third Department, New York

Matter of BILL EARDLEY, Respondent,

v.

UNATEGO CENTRAL SCHOOL DISTRICT et al., Appellants.

WORKERS' COMPENSATION BOARD, Respondent.

Decided September 14, 2017

Facts: A legally blind claimant, sustained a work-related injury, which caused him to stop working. The claim was established to the right shoulder and neck. He was subsequently classified as having a permanent total disability and awarded benefits accordingly. Video footage was obtained of claimant performing activities that allegedly demonstrated his ability to work and the issue that the claimant violated Workers' Compensation Law §114-a was raised. The Workers' Compensation Law Judge found there was no violation of §114-a and the Board affirmed. The carrier appealed.

Holding: *Affirmed.*

Disposition: Workers' Compensation Law §114-a(1) provides that a claimant who "knowingly makes a false statement or representation as to a material fact... shall be disqualified from receiving any compensation directly attributable to such false statement or representation." Significantly, "[t]he Board is the sole arbiter of witness credibility, and its determination as to whether a claimant violated Workers' Compensation Law §114-a will not be disturbed if supported by substantial evidence" (citations omitted). The video surveillance showed claimant's activities at an amateur sporting events organized by his wife. In such surveillance, he was seen walking around concessions and merchandise areas, helping to move a popcorn machine and assisting his disabled daughter take money at the secondary admission gate. The claimant's wife testified that the team was a nonprofit organization, which relied on volunteers and that the money

collected was for fixed expenses such as liability insurance and field rental. The wife further testified that the claimant did not have specific duties but was present to support the team. The claimant testified that he did not work but he attended games to support the team. However, he acknowledged that he assisted his daughter in collecting money. The Court held that the Board could reasonably conclude that claimant's activities were minimal and not inconsistent with representations he made as there was substantial evidence to support the Board's finding.

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