State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 19, 2026 CV-25-1142

In the Matter of the Claim of
RICHARD HYDE,
Appellant,
v

BP ELEVATOR CO., INC., et al., MEMORANDUM AND ORDER
Respondents.

WORKERS' COMPENSATION
BOARD,
Respondent.

Calendar Date: October 13, 2026

Before: Garry, P.J., Clark, Pritzker, Powers and Ryba, JJ.

John F. Clennan, Ronkonkoma, for appellant.

Tiffany Gordon, State Insurance Fund, Albany (*Tahseen H. Midani* of counsel), for BP Elevator Co., Inc. and another, respondents.

Clark, J.

Appeal from a decision of the Workers' Compensation Board, filed June 2, 2025, which ruled, among other things, that claimant violated Workers' Compensation Law § 114-a and disqualified him from receiving future indemnity benefits.

Claimant sustained a work-related back injury in October 2022, established a workers' compensation claim and was awarded indemnity benefits at a temporary total

disability rate. The employer and its workers' compensation carrier (hereinafter collectively referred to as the carrier) thereafter raised a Workers' Compensation Law § 114-a violation based upon surveillance video footage from April 13, 2023 depicting claimant assisting in removing a power washer from the bed of a truck, carrying an aluminum ladder to his backyard and climbing on and off of the ladder while power washing a portion of his home and fence for approximately 30 minutes.

Following depositions and hearing testimony, the Workers' Compensation Law Judge (hereinafter WCLJ) found that claimant violated Workers' Compensation Law § 114-a by materially misrepresenting his condition and imposed a mandatory penalty from the date of the surveillance video to the date of claimant's back surgery on February 27, 2024 and declined to impose a discretionary penalty, finding that claimant's misrepresentations/omissions did not rise to a level necessitating such penalty. The carrier sought review of the WCLJ's decision, asserting that the period of the mandatory penalty was insufficient and that a discretionary penalty was warranted. The Workers' Compensation Board modified the WCLJ's decision by extending the mandatory penalty to the date of the hearing and imposing a discretionary penalty of permanent disqualification from indemnity benefits, finding that claimant's misrepresentation regarding his degree of disability was egregious. Claimant appeals.

Initially, we note that claimant did not appeal the WCLJ's decision and, in rebuttal to the carrier's application for review, conceded that the WCLJ properly found a violation of Workers' Compensation Law § 114-a and properly imposed the mandatory penalty. As such, any challenge to those findings is not properly before this Court for review (*see Matter of Middleton v Coxsackie Correctional Facility*, 38 NY2d 130, 132-133 [1975]; *Matter of Ceja v Manetta Enters., Inc.*, 212 AD3d 972, 974 [3d Dept 2023]).

Turning to claimant's challenge to the imposition of the discretionary penalty, "it is well settled that judicial review of an administrative penalty is limited to whether the penalty constitutes an abuse of discretion as a matter of law and, as such, a penalty must be upheld unless it is so disproportionate to the offense as to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law" (*Matter of Alzate v Quality Bldg. Servs. Corp.*, 238 AD3d 1437, 1440 [3d Dept 2025] [internal quotation marks and citations omitted], *lv denied* 44 NY3d 910 [2026]; *accord Matter of Belcher v Dominican Vil. Inc.*, 246 AD3d 1251, 1253 [3d Dept 2026]; *see Matter of Conliffe v Darden Rest.*, 187 AD3d 1398, 1401 [3d Dept 2020]). "A discretionary penalty of permanent disqualification is typically reserved for situations where the underlying deception has been deemed egregious or severe, or there was a lack of mitigating

circumstances" (*Matter of Belcher v Dominican Vil. Inc.*, 246 AD3d at 1254 [internal quotation marks and citations omitted]; *see Matter of DeBryne v Pittsford Mercury, Inc.*, 236 AD3d 1165, 1166 [3d Dept 2025]).

On the day that the surveillance video was filmed, claimant, who is seen on the video without any walking aid or ambulatory assistive device, was evaluated by an independent medical examiner. On the medical questionnaire in connection therewith, claimant reported that his pain level was 10 out of 10 and noted that he had trouble bending, walking and sleeping. Following the examination, the examiner, based upon objective and subjective medical assessments, opined that claimant had a 75% orthopedic disability and was capable of sedentary work "with lifting and carrying up to 10 pounds occasionally," which restriction would remain in place for eight weeks. Later that day, claimant was recorded engaging in approximately 30 minutes of home maintenance activities, which included climbing a ladder to power wash a portion of his house and fence. Although the examiner testified that claimant's surveillance activities were inconsistent with the noted medical restrictions, the record reflects that the examiner did not review the surveillance footage but instead relied on the investigator's report summarizing claimant's activities in concluding that claimant's activities exceeded the medical restrictions noted in his initial report.

Furthermore, although the record supports a finding that claimant violated Workers' Compensation Law § 114-a, it does not reflect a pattern of doing so and establishes that claimant in fact suffered from a significant back injury that, in addition to other medical treatment, culminated in back surgery less than a year after engaging in the 30 minutes of activities captured on the surveillance video. Upon our review of the record, we agree with claimant that "there is inadequate support for the Board's determination that claimant's acts were 'sufficiently egregious' to warrant the onerous penalty of total disqualification from future wage loss benefits" (*Matter of Belcher v Dominican Vil. Inc.*, 246 AD3d at 1254; *see Matter of Kennedy v 3rd Track Constructors*, 213 AD3d 1005, 1009 [3d Dept 2023]; *compare Matter of Alzate v Quality Bldg. Servs. Corp.*, 238 AD3d at 1439-1441; *Matter of Tirado v Symphony Space, Inc.*, 236 AD3d 1250, 1251-1254 [3d Dept 2025]; *Matter of Ringelberg v John Mills Elec., Inc.*, 195 AD3d 1332, 1334-1335 [3d Dept 2021]; *Matter of Denman v Cobbler's Rest.*, 106 AD3d 1289, 1290-1291 [3d Dept 2013]; *see generally Matter of DeBryne v Pittsford Mercury, Inc.*, 236 AD3d at 1166-1167).

Garry, P.J., Pritzker, Powers and Ryba, JJ., concur.

ORDERED that the decision is modified, without costs, by reversing so much thereof as disqualified claimant from receiving all future wage replacement benefits, and, as so modified, affirmed.

ENTER:



Robert D. Mayberger
Clerk of the Court