

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Matter of DiFilippo v. Edison

117 A.D.3d 1363 (N.Y. App. Div. 3d Dep't 2014) · Decided May 29, 2014

SUMMARY

The court affirmed a Workers’ Compensation Board decision denying the claimant’s request to change the hearing venue from Manhattan to White Plains. It held that the claimant did not provide sufficient justification for the requested change and upheld the \$250 penalty imposed on his attorney for seeking review without reasonable grounds.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Peters, E.J.; Lahtinen, J.; McCarthy, J.; Garry, J.; Devine, J.
JURISDICTION	New York
DECIDED	May 29, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Claimant appealed a Workers' Compensation Board decision that denied his request to change the venue of his workers' compensation hearings and imposed a \$250 penalty on his attorney.
STANDARD OF REVIEW	Whether substantial evidence supported the Workers' Compensation Board's determination; the court also reviewed the Board's imposition of the statutory penalty.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Claimant v. Edison, Workers' Compensation Board

TOPICS

- workers compensation
- judicial review of agency action
- administrative law
- appellate procedure
- standard of review

PRACTICE AREAS

- workers compensation
- administrative law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Board properly denied claimant's request to transfer the venue of his hearings from Manhattan to White Plains.
2. Whether substantial evidence supported the Board's determination that claimant failed to demonstrate sufficient justification for a venue change.
3. Whether the Board properly imposed a \$250 penalty on claimant's attorney under Workers' Compensation Law § 114-a (3) (ii).

HOLDINGS

1. The Board properly denied claimant's request because he failed to provide sufficient justification for changing the hearing venue.
2. Substantial evidence supported the Board's determination that claimant had not demonstrated the need for a change of venue.
3. The Board properly imposed a \$250 penalty on claimant's attorney for seeking review without reasonable grounds under Workers' Compensation Law § 114-a (3) (ii).

KEY QUOTATIONS

“As such, substantial evidence supports the Board’s determination that claimant had not demonstrated the need for a change of venue, and we decline to disturb its imposition of a penalty pursuant to Workers’ Compensation Law § 114-a (3) (ii)” (1364)

FACTUAL BACKGROUND

Claimant, who resided in New York City, was injured while working for the employer in the Bronx and subsequently received workers' compensation benefits. He requested a change of venue from the Manhattan district office to White Plains, asserting that attending hearings there would be easier and less expensive. He provided no evidentiary support beyond a brief letter, and the Board concluded that he had not shown sufficient justification for the transfer.

PROCEDURAL HISTORY

After claimant was injured while working for the employer in the Bronx and obtained workers' compensation benefits, he requested that his hearings be transferred from Manhattan to White Plains. A Workers' Compensation Law Judge rejected the request, and the Workers' Compensation Board affirmed, finding no sufficient justification for the change and imposing a \$250 penalty on claimant's attorney for seeking review without reasonable grounds. The Appellate Division affirmed the Board's decision.

DISPOSITION

affirmed

CASES CITED

- Matter of Toledo v. Administration for Children Servs., 112 A.D.3d 1209, 1210 (2013)
- Matter of Wolfe v. New York City Dept. of Corr., 112 A.D.3d 1197, 1198 (2013)

OPINION

PETERS, J.

Peters, EJ. Appeal from a decision of the Workers' Compensation Board, filed November 2, 2012, which, among other things, denied claimant's request for a change of venue. Claimant resides in New York City, and successfully applied for workers' compensation benefits after he was injured while working for the employer in the Bronx. He thereafter requested, upon a form provided by his attorney, a change of venue from the district office in Manhattan to one in the City of White Plains, Westchester County.

A Workers' Compensation Law Judge rejected the request, prompting claimant to seek review from the Workers' Compensation Board. The Board affirmed, pointing out that its rules generally require that hearings be conducted in the district where the claimant resides and, here, a "sufficient justification" to warrant a change in venue was not provided. Specifically, the Board rejected claimant's contention that it would be easier and less expensive for him to attend hearings in White Plains as speculative and unsupported by any evidence.

The Board also assessed a \$250 penalty against claimant's attorney pursuant to Workers' Compensation Law § 114-a (3) (ii) for seeking review without reasonable grounds. Claimant now appeals, and we affirm. As we recently noted, the Chair of the Board "has controlling *1364authority to designate hearing places" (.Matter of Toledo v Administration for Children Servs., 112 AD3d 1209, 1210 [2013]), and did so here.

Claimant made no effort to justify the change of venue beyond making unsupported assertions in a brief letter, and the Board noted that claimant's attorney had previously been made aware of the requirement that justification be provided for a request to change venue under these circumstances.

As such, substantial evidence supports the Board's determination that claimant had not demonstrated the need for a change of venue, and we decline to disturb its imposition of a penalty pursuant to Workers' Compensation Law § 114-a (3) (ii) (see id.; Matter of Wolfe v New York City Dept. of Corr., 112 AD3d 1197, 1198 [2013]). Lahtinen, McCarthy, Garry and Devine, JJ., concur.

Ordered that the decision is affirmed, without costs.