

LOIS LITIGATION & APPEAL TEAMS OBTAIN LIFETIME FRAUD PENALTY AGAINST CLAIMANT

The Gavel Member: Connecticut / New Jersey - Lois Law Firm, Workers' Compensation

LOIS Litigation team comprised of Partner Christian Sison and Paralegal Brianna Nicolas obtained a reclassification win for a Hotel client earlier this year. In *L.Q. v W.N.Y.T.S.*, the claimant had been found to have sustained a permanent total disability, entitling her to lifetime indemnity benefits. The Hotel transferred the case for LOIS to provide a different approach, which resulted in using surveillance to argue that the claimant was no longer suffering from the permanent total disability.

In that same case, the LOIS Litigation team also pursued fraud based on the surveillance, but the Law Judge rejected this application. Knowing that the claimant would appeal the reclassification finding, Christian and Brianna recommended an aggressive approach to appeal the fraud decision. Working

with LOIS Senior Associate Addison O'Donnell to write the perfect brief, the Hotel client was rewarded by LOIS' creativity when the reclassification finding was reversed, because the fraud finding was also reversed!

A Panel of the Review Division found that LOIS correctly applied the fraud statute when the claimant was surveilled performing yard work but also magnifying her symptoms by using a rolling walker to attend medical appointments. The Panel dutifully cited that the claimant embellished the degree of her disability, which led to a treating physician absurdly recommending that the Hotel pay for the claimant's daughter to act as a home health aide. The Panel found this behavior to be egregious, eliminating all future indemnity exposure for the Hotel.

FABRICATED CLAIMS COMPLETE DISALLOWANCE AT TRIAL

Attorney Anthony Iler successfully obtained a complete disallowance at trial despite the presence of an IME conceding causal relationship for injuries to the neck, back, left wrist and left ankle. The claimant alleged he was injured at a construction site in February of 2021. LOIS initially raised all available defenses and argued that the claimant was the employee of a demolition sub-contractor rather than its insured client. Further investigation revealed substantial "red flags" pointing to the fact that no accident actually occurred.

At the time of trial, extensive cross examination of the claimant was conducted. Mr. Iler then argued that the claim must be disallowed in its entirety. In support of this position, it was noted that the claimant had just returned to work days before the alleged accident after a four-year gap in employment. This gap was said to be related to a prior claim. In fact, the claimant presented for an independent medical examination relating to the prior claim just days after the alleged accident date in this matter. At that time, he completed an IME questionnaire

denying any subsequent accidents.

Mr. Iler requested that the claim be disallowed in its entirety. Alternatively, WCL 114-a was raised based on material misstatements made by the claimant and the purposeful concealment of damaging evidence. The claimant had produced a copy of a text message to show that notice of an injury was provided to the employer. However, when directed to produce the message that immediately preceded that message; it became apparent that the claimant simply thanked the employer for the opportunity but indicated he would not be returning. No reference was made to an injury of any kind in the communication.

Following summations by the parties, the Law Judge disallowed the claim entirely on the basis that claimant lacked credibility and sufficient evidence existed that the entire occurrence was fabricated.

FEATURED ATTORNEYS:



Christian Sison

201.880.7213
csison@loisllc.com



Anthony Iler

201.880.7213
ailer@loisllc.com