

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY GIEBEL,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 47580

FILED

JAN 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of a workers' compensation claim. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

Appellant, Jerry Giebel, suffered an industrial injury in the course and scope of his employment in 1999. Several hours after the injury, Giebel was evaluated by a physician who noted that Giebel complained of pain in his lower left back and hip. Giebel subsequently filed a workers' compensation claim for only his back pain with respondent, Employers Insurance Company of Nevada (EICON) and, in 2001, EICON awarded him a permanent partial disability award (PPD). Giebel's PPD award consisted of a lump sum payment of \$14,372.75. The lump sum agreement provided that Giebel "waive[d] all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability, except [h]is right to reopen his claim" pursuant to NRS 616C.390. At the time, Giebel neither sought

compensation for his hip injury nor appealed EICON's decision to compensate him for only his back injury.

In 2005, Giebel requested that EICON reopen his claim for the injury to his left hip. EICON denied Giebel's request pursuant to NRS 616C.390(1) and NRS 616C.495(2). Specifically, EICON noted that Giebel failed to appeal the scope of his claim following EICON's initial determination. Giebel never received treatment for his hip while his claim was open for active treatment, and accepted the PPD award for only his back injury in 2001. A hearing officer and an appeals officer subsequently upheld EICON's determination. Giebel then filed a petition for judicial review, which the district court denied. Giebel then filed this timely appeal.

On appeal, Giebel makes two arguments as to why he should be compensated for his hip injury. He contends that a claimant is permitted to include a late-manifesting injury in an original claim under NRS 616C.160, even when the claim was closed via acceptance of a lump sum award under NRS 616C.495(2). He also claims that he was entitled to independently reopen his claim under NRS 616C.390. We review these issues of statutory interpretation de novo.¹

We conclude that Giebel's first argument is without merit, since NRS 616C.160 assumes an open claim under NRS 616C.020, and here, Giebel closed his claim pursuant to NRS 616C.495. Without the existence of an open claim, Giebel cannot seek to include a late-

¹SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).

manifesting injury under NRS 616C.160.² In addition, at the time Giebel accepted his lump sum payment, NRS 616C.495(2) provided that:

2. If the claimant elects to receive his payment for a permanent partial disability in a lump sum . . . all of his benefits for compensation terminate. His acceptance of that payment constitutes a final settlement of all factual and legal issues in the case. By so accepting he waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability, except:

(a) His right to reopen his claim according to the provisions of NRS 616C.390 [allowing for the reopening of a claim if a change of circumstances warrants an increase or rearrangement of compensation and the primary cause of the change of circumstances is the injury for which the claim was originally made]; and

(b) Any counseling, training or other rehabilitative services provided by the insurer.³

Giebel's argument that he should have been allowed to reopen his claim under NRS 616C.160 ignores the fact that, under NRS 616C.495(2), a claimant's acceptance of a lump sum payment constitutes a final settlement of the claim and a waiver of the claimant's rights, except the

²The appeals officer correctly noted that NRS 616C.160 permits, under certain circumstances, the addition of a newly developed condition to an open claim. See Georgia Pacific v. Piwovar, 753 P.2d 948 (Or. 1988). However, we agree with the appeals officer that such circumstances were not present here, in part, because Giebel had already closed his claim pursuant to NRS 616C.495(2).

³2003 Nev. Stat., ch. 305, § 11, at 1675 (emphasis added).

right to reopen a claim due to a worsening of the claimant's condition.⁴ Accordingly, by the plain meaning of the statute,⁵ a claimant cannot include a late manifesting injury under a NRS 616C.160 claim after closing the original claim by accepting a lump sum payment under NRS 616C.495. Therefore, Giebel cannot reopen his claim under NRS 616C.160 by asserting that his hip injury manifested itself after his claim was closed.

Nonetheless, as previously noted, accepting a lump sum payment under NRS 616C.495 does not preclude a claimant from reopening his claim under NRS 616C.390. However, under the circumstances here, we conclude that Giebel cannot reopen his claim. In particular, under NRS 616C.390(1)(b), the primary cause of any change in circumstances allowing for a claim to be reopened must be the "injury for which the claim was originally made." This court previously held that NRS 616C.390 "allows the reopening of closed workers' compensation claims when the original injury is the primary cause of a worsening of the industrial condition."⁶ Because EICON only accepted Giebel's claim for

⁴Giebel argues that he was not required to reopen his claim under NRS 616C.390 in order to include a late-manifesting injury in the original claim pursuant to NRS 616C.160, and cites this court's decision in Hayes v. SIIS, 114 Nev. 1340, 971 P.2d 1257 (1998), as authority for his argument. However, given that Hayes did not involve a lump sum payment, it is inappropriate here.

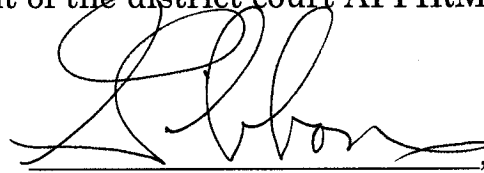
⁵In re Contrevo, 123 Nev. ___, ___, 153 P.3d 652, 653-54 (2007) (holding that "[w]hen examining a statute, this court should ascribe plain meaning to its words, unless the plain meaning was clearly not intended").

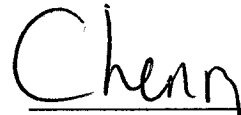
⁶Day v. Washoe County Sch. Dist., 121 Nev. 387, 388, 116 P.3d 68, 68 (2005) (emphasis added).

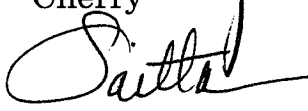
his back, and because, according to Giebel's physician, Giebel's hip injury was likely precipitated by the original accident and not complications arising from his original back injury, Giebel cannot now reopen his claim under NRS 616C.390 to seek compensation for his hip.

We therefore conclude that the district court did not abuse its discretion in denying judicial review.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: First Judicial District Court Dept. 1, District Judge
John W. Hawkins, Settlement Judge
R. Trent McAuliffe
Sertic Larsen, Ltd.
Carson City Clerk

⁷This court, like the district court, examines administrative decisions for clear legal error or arbitrary abuse of discretion. Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003); SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998). The appeals officer's fact-based conclusions of law are "entitled to deference and will not be disturbed if they are supported by substantial evidence." Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003) (quoting Jones v. Rooner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)).