

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN W. TAYLOR,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 41763

EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Appellant,
vs.
JOHN W. TAYLOR,
Respondent.

No. 41803

FILED

JUL 06 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal consolidated with an appeal, both from a district court order denying petitions for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Ronald D. Parraguirre, Judge.

Both parties appeal from an order denying their petitions for judicial review. The parties are familiar with the facts and we do not recount them in this order except as is necessary for our disposition.

This court's role in reviewing administrative decisions is identical to that of a district court: to review evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of discretion.¹

¹Installation & Dismantle v. SIIS, 110 Nev. 930, 932, 879 P.2d 58, 59 (1994).

First, we conclude that Taylor's arguments against offsetting his permanent total disability (PTD) benefits with his earlier lump-sum permanent partial disability (PPD) benefits are precluded by res judicata. "Generally, the doctrine of res judicata precludes parties . . . from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction."² Here, the offset issue has been previously raised, adjudicated, and decided in a prior action that reached the district court level. The district court denied Taylor's petition in 1997, but Taylor failed to file an appeal with this court. Accordingly, we conclude that the appeals officer did not err in concluding that res judicata precluded Taylor from relitigating the offset issue.

A similar analysis applies to Taylor's argument that the average wage calculations for the PTD benefits he had been receiving should be based on the 1993 fiscal year. Taylor failed to appeal this issue after it reached the district court level. We conclude that the appeals officer also did not err in concluding that res judicata precluded Taylor from relitigating the wage calculation issue.³

Even so, the appeals officer did determine that Taylor was entitled to a wage recalculation stemming from the 1999 hearing loss injury because it was a new injury unrelated to the prior 1990 and 1991 accidents that spawned his PTD status. As a result, the appeals officer

²University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994).


³We have considered the balance of Taylor's numerous arguments on appeal, including those involving constitutional, evidentiary, and attorney ethics issues, but conclude that they lack merit.

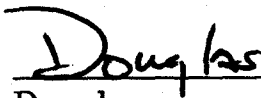
determined that Taylor's PTD wage benefits should be recalculated from the date of his hearing injury, which would be the last day he worked, August 20, 1992. Accordingly, the appeals officer concluded that EICON should recalculate Taylor's PTD benefits from the 1993 fiscal year, which encompassed the date of injury, and the recalculated PTD benefits should be awarded from 1999 forward, the date of Taylor's hearing loss/tinnitus claim. The appeals officer made this determination despite noting that Taylor's hearing loss would not have precluded Taylor from gainful employment or rendered him PTD like his other injuries. The appeals officer deemed this a "fair result."

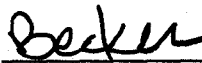
Although EICON argues otherwise, we conclude that the appeals officer did not err in making such a determination. Taylor's PTD benefits were based on the wage base from the 1991 fiscal year, which predated Taylor's last day at work on August 20, 1992. The insurer had listed this day as the date of Taylor's hearing injury. The amount of compensation is determined as of the date of injury.⁴ Although Taylor's hearing injury was not deemed a PTD injury, it occurred subsequent and in addition to his PTD injury. Because it was a separate and additional injury stemming not from Taylor's back, but from his exposure to noise at work, we conclude that the appeals officer did not err in recalculating Taylor's wage base using the 1993 fiscal year, which encompassed his date of injury, and that the district court did not err in denying judicial review. For the foregoing reasons, we

⁴NRS 616C.425(1).

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Becker

cc: Eighth Judicial District Court Dept. 3, District Judge
David H. Benavidez
John W. Taylor
Clark County Clerk