

SUPREME COURT OF IDAHO

Gooby v. Lake Shore Management Co.

29 P.3d 390, 136 Idaho 79 (2001) · No. No. 26332 · Decided June 27, 2001

SUMMARY

The Supreme Court of Idaho affirmed the Industrial Commission’s findings that Barbara Gooby was not totally and permanently disabled under the odd-lot doctrine and that she had a 10% whole-person permanent partial disability. The court held that Gooby did not establish a failed work attempt or show that a job search would have been futile. It vacated the Commission’s denial of attorney fees and remanded that issue for further consideration.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Justice; Eismann; Trout; Schroeder; Walters; Kidwell
JURISDICTION	Idaho
DECIDED	June 27, 2001
DOCKET	No. 26332
DISPOSITION	vacated
PROCEDURAL POSTURE	Claimant appealed an Industrial Commission order finding that she failed to prove total and permanent disability under the odd-lot doctrine and denying attorney fees. The Supreme Court affirmed the disability findings but vacated the denial of attorney fees and remanded that issue to the Commission.
STANDARD OF REVIEW	The Court reviews legal questions freely and reviews factual findings only for substantial and competent evidence. The Commission's credibility and evidentiary-weight determinations are not disturbed unless clearly erroneous, and the Court does not reweigh the evidence. Whether a claimant has an impairment and the degree of permanent disability are questions of fact.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Idaho.
PARTIES	Barbara Gooby v. Lake Shore Management Co., State Insurance Fund

TOPICS

workers compensation

standard of review

appellate procedure

employment law

PRACTICE AREAS

workers compensation

employment law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Industrial Commission erred by failing to specifically address whether Gooby had demonstrated a failed work attempt under the odd-lot doctrine.
2. Whether the Commission's findings concerning Gooby's disability and employability were supported by substantial and competent evidence.
3. Whether Gooby was entitled to attorney fees because the State Insurance Fund allegedly unreasonably stopped paying for her pain medications.

HOLDINGS

1. A claimant cannot establish a prima facie case of odd-lot disability merely by showing that she could not continue performing the job held at the time of injury; she must show that she attempted other types of employment without success, searched for other work without finding it, or that a job search would have been futile. Because Gooby presented no evidence that she unsuccessfully attempted another type of employment, the Commission did not need to remand for a specific finding on failed work attempt.
2. The Industrial Commission's findings that Gooby had a 10% permanent partial disability and had not proved total and permanent disability or odd-lot status were supported by substantial and competent evidence.
3. The denial of attorney fees had to be vacated because the Commission failed to address whether the State Insurance Fund unreasonably discontinued payment for Gooby's pain medications. The obligation to provide necessary medical care is separate from the obligation to pay temporary disability benefits, and unreasonable refusal to pay medical care may support attorney fees under Idaho Code section 72-804.

KEY QUOTATIONS

"A claimant must do more than assert that he cannot perform his previous type of employment in order to qualify as an "odd lot" worker." (395)

"We therefore vacate the denial of attorney fees and remand this case to the Commission for it to determine whether the State Insurance Fund's conduct in ceasing to pay for Gooby's pain medications entitles her to an award of attorney fees under Idaho Code § 72-804." (401)

FACTUAL BACKGROUND

Barbara Gooby worked as a buyer and manager at a retail store in Sandpoint, Idaho. She slipped on ice at work on November 21, 1996, sustaining a concussion and back and cervical strains, and later claimed continuing pain and related symptoms that impaired her ability to work. She worked sporadically until the store closed on April

1, 1999, and thereafter did not work. The Industrial Commission found a 10% permanent partial disability, rejected her claim of total and permanent disability under the odd-lot doctrine, and awarded additional partial disability benefits but no attorney fees.

PROCEDURAL HISTORY

Gooby filed a workers' compensation complaint after sustaining an injury at work. Following a hearing, the referee found that she had a 10% permanent partial disability and had not established total and permanent disability under the odd-lot doctrine; the Industrial Commission adopted those findings and denied reconsideration. Gooby appealed to the Idaho Supreme Court.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand to the Industrial Commission to determine whether the State Insurance Fund's conduct in ceasing to pay for Gooby's pain medications entitles her to attorney fees under Idaho Code § 72-804.

CASES CITED

- Rivas v. K.C. Logging, 134 Idaho 603, 7 P.3d 212 (2000)
- Lyons v. Industrial Special Indem. Fund, 98 Idaho 403, 565 P.2d 1360 (1977)
- Dehlbom v. Industrial Special Indem. Fund, 129 Idaho 579, 930 P.2d 1021 (1997)
- Huerta v. School Dist. No. 431, 116 Idaho 43, 773 P.2d 1130 (1989)
- Gordon v. West, 103 Idaho 100, 645 P.2d 334 (1982)
- Nelson v. David L. Hill Logging, 124 Idaho 855, 865 P.2d 946 (1993)
- Boley v. Industrial Special Indem. Fund, 130 Idaho 278, 939 P.2d 854 (1997)
- Bloching v. Albertson's, Inc., 129 Idaho 844, 934 P.2d 17 (1997)
- Bowman v. Twin Falls Constr. Co., Inc., 99 Idaho 312, 581 P.2d 770 (1978)
- Paulson v. Idaho Forest Industries, Inc., 99 Idaho 896, 591 P.2d 143 (1979)
- Jensen v. City of Pocatello, 135 Idaho 406, 18 P.3d 211 (2000)
- Poss v. Meeker Mach. Shop, 109 Idaho 920, 712 P.2d 621 (1985)
- Kinney v. Tupperware Co., 117 Idaho 765, 792 P.2d 330 (1990)
- Pomerinke v. Excel Trucking Transp., Inc., 124 Idaho 301, 859 P.2d 337 (1993)
- Zapata v. J.R. Simplot Co., 132 Idaho 513, 975 P.2d 1178 (1999)
- Dennis v. School District # 91, 135 Idaho 94, 15 P.3d 329 (2000)
- Harrison v. Osco Drug, Inc., 116 Idaho 470, 776 P.2d 1189 (1989)
- Cantu v. J.R. Simplot Co., 121 Idaho 585, 826 P.2d 1297 (1992)

