

SUPREME COURT OF NEVADA

Dickinson v. American Medical Response, 124 Nev. 460

186 P.3d 878 (2008) · No. No. 48021 · Decided July 3, 2008

SUMMARY

The Nevada Supreme Court held that equitable estoppel and waiver principles may apply in administrative workers' compensation proceedings. The court reversed and remanded because the appeals officer had not made adequate factual findings regarding the claimant's cervical condition and whether it was industrial. The court also directed that any permanent partial disability award on remand comply with the statutory rating-physician selection requirements.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Hardesty; Parraguirre; Douglas
JURISDICTION	Nevada
DECIDED	July 3, 2008
DOCKET	No. 48021
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Dickinson appealed the district court's denial of her petition for judicial review of an appeals officer's workers' compensation decision limiting her permanent partial disability award to her right shoulder and excluding her cervical spine condition.
STANDARD OF REVIEW	The court reviews an appeals officer's decision for clear error or abuse of discretion, independently reviews purely legal determinations, and defers to fact-based legal conclusions supported by substantial evidence. Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion; the court does not substitute its judgment for the appeals officer's credibility or weight-of-the-evidence determinations.
PRECEDENTIAL VALUE	precedential
PARTIES	Mary Beth Dickinson v. American Medical Response

TOPICS

workers compensation

administrative law

judicial review of agency action

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PRACTICE AREAS

workers compensation

administrative law

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QUESTIONS PRESENTED

1. Whether equitable estoppel or waiver may apply in an administrative workers' compensation proceeding when an administrator's conduct allegedly conflicts with written determinations excluding a condition from the claim.
2. Whether the appeals officer was required to make explicit factual findings and legal conclusions explaining the determination that Dickinson's cervical condition was not industrial and therefore was not compensable.
3. Whether any permanent partial disability award on remand must comply with the statutory rating-physician selection process under NRS 616C.490(2).

HOLDINGS

1. Equitable estoppel and implied waiver principles may be applied in workers' compensation proceedings, and because their application generally requires factual determinations, the appeals officer must consider those doctrines in the first instance.
2. An appeals officer must support a contested-case determination with explicit factual findings and separately stated conclusions of law; the failure to do so prevented meaningful judicial review of the determination that Dickinson's cervical condition was not industrial.
3. Any permanent partial disability award on remand must comply with the rating-physician selection requirements of NRS 616C.490(2); the appeals officer may not rely on an apparently unauthorized rating physician without a basis in the record for departing from the statutory process.

KEY QUOTATIONS

"We conclude that equitable estoppel and waiver principles may be applied in workers' compensation proceedings, and therefore, since those principles generally require a factual determination, the appeals officer has authority to and must consider them in the first instance." (879)

"As set forth in Nevada's Administrative Procedure Act at NRS 233B.125, the appeals officer's final decision must include findings of fact and conclusions of law, separately stated." (884)

"Any PPD award on remand should accord with NRS 616C.490(2)'s requirements." (885)

FACTUAL BACKGROUND

Dickinson had a preexisting nonindustrial cervical condition when she sustained an industrial right upper-extremity injury in August 1998. Although her employer initially accepted only the right arm and shoulder, the

employer's administrator paid for or authorized treatment involving her cervical condition and scheduled permanent partial disability evaluations that included the cervical spine. Medical opinions differed concerning whether the industrial injury caused or substantially contributed to the cervical condition, and the appeals officer ultimately awarded benefits only for the right shoulder after finding that Dickinson had not timely challenged exclusion of the cervical condition and had not proved its industrial character.

PROCEDURAL HISTORY

Dickinson sustained an industrial injury to her right upper extremity and later sought inclusion of her cervical spine condition in the workers' compensation claim. The appeals officer denied permanent partial disability benefits for the cervical condition, relying on Dickinson's failure to administratively challenge its exclusion and alternatively finding that she had not shown the condition was industrial. The district court denied judicial review, and the Nevada Supreme Court reversed and remanded for further proceedings before the appeals officer.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must remand the matter to the appeals officer. The appeals officer must determine in the first instance whether equitable estoppel or waiver bars American Medical Response from asserting that Dickinson's failure to appeal precludes relief or from denying the industrial nature of the cervical condition; make explicit factual findings and legal conclusions under NRS 233B.125 concerning whether the cervical condition is industrial; and comply with the rating-physician selection requirements of NRS 616C.490(2) in any PPD award.

CASES CITED

- Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003)
- Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003)
- Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005)
- Reno Sparks Visitors Authority v. Jackson, 112 Nev. 62, 65-66, 910 P.2d 267, 269-70 (1996)
- Browning v. Young Elec. Sign Co., 113 Nev. 420, 424, 936 P.2d 322, 325 (1997)
- Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994)
- Schmidt v. Beeson Plumbing and Heating, 869 P.2d 1170, 1175 & n.7 (Alaska 1994)
- Barrington v. Employment Sec. Com'n, 55 N.C. App. 638, 286 S.E.2d 576, 578 (1982)
- Appleby v. Workers' Safety & Comp. Div., 47 P.3d 613, 619 (Wyo. 2002)
- Lentz v. McMahon, 49 Cal. 3d 393, 261 Cal. Rptr. 310, 777 P.2d 83, 88-91 (1989)
- Matter of Harrison Living Trust, 121 Nev. 217, 222-23, 112 P.3d 1058, 1061-62 (2005)
- Hudson v. Horseshoe Club Operating Co., 112 Nev. 446, 457, 916 P.2d 786, 792 (1996)
- Imperial Palace v. Dawson, 102 Nev. 88, 90-91, 715 P.2d 1318, 1320 (1986)
- State, Bd. Psychological Exmr's v. Norman, 100 Nev. 241, 244, 679 P.2d 1263, 1265 (1984)

- *PSC v. Continental Tel. Co.*, 94 Nev. 345, 350, 580 P.2d 467, 470 (1978)
- *Georgeff v. Sahara Hotel*, 103 Nev. 485, 489, 745 P.2d 1142, 1145 (1987)
- *Diaz v. Golden Nugget*, 103 Nev. 152, 155, 734 P.2d 720, 723 (1987)
- *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)
- *Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005)

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