

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAIL ASAY, A/K/A DOROTHY BALL,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 44159

FILED

MAY 10 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review in a workers' compensation case. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

The parties are familiar with the facts, and we do not recount them except as necessary for our disposition.

As a preliminary matter, we note that the district court did not abuse its discretion in hearing EICON's untimely filed motion to dismiss.¹

NRS 616C.370 and NRS 233B.130 govern a party's statutory right to appeal from an appeals officer's decision. Pursuant to NRS 616C.370(1)(b), a claimant may generally institute a petition for judicial review where "[a] final decision of an appeals officer has been rendered on such claim." NRS 233B.130(1)(b) further provides that a party "aggrieved by a final decision in a contested case" is entitled to judicial review. A

¹See NRS 233B.133(6); see also Fitzpatrick v. State, 107 Nev. 486, 488-89, 813 P.2d 1004, 1005-06 (1991).

final, appealable judgment “is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court.”²

The appeals officer remanded Asay’s workers’ compensation claim to the hearing officer to determine Asay’s entitlement to permanent total disability. We interpret the order of remand as precisely that – an order of remand.³ The order by no means disposed of the issues presented in Asay’s case. Asay’s claim is not closed; it remains open for a determination of whether she is entitled to permanent total disability or additional permanent partial disability.⁴ Therefore, the appeals officer’s order of remand was not a final, appealable decision pursuant to NRS 616C.370 and NRS 233B.130.⁵

²Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

³This is especially evident after reviewing the transcript of the appeals hearing. The appeals officer made every indication at the hearing that she did not believe she had jurisdiction to hear Asay’s claim and that she intended to remand Asay’s claim for further proceedings. The appeals officer also indicated that she did not intend to address the merits of Asay’s appeal, nor was there any indication in the record that the appeals officer addressed the merits of Asay’s appeal.

⁴NRS 616C.345(4) provides that a hearing officer’s decision is not automatically stayed by an appeal unless a party applies for a stay from the appeals officer. While it does not appear that Asay applied for a stay, the appeals officer’s order of remand has the effect of staying the hearing officer’s decisions until a final determination is made on her claim for benefits.

⁵See Ayala v. Caesars Palace, 119 Nev. 232, 235-37, 71 P.3d 490, 492-93 (2003) (appeals officer’s failure to exercise jurisdiction was harmless error where wage determination was remanded for recalculation); Cf. Bally’s Grand Hotel v. Reeves, 112 Nev. 1487, 1488-89, 929 P.2d 936, 937 (1996) (district court order of remand that was substantively final was an appealable order).

Because the appeals officer's order of remand was not a final, appealable decision, we hold that the district court did not err in dismissing Asay's petition for judicial review for lack of jurisdiction. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Jerome Polaha, District Judge
R. Trent McAuliffe
Piscevich & Fenner
Washoe District Court Clerk