

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY BERGER,  
Appellant,  
vs.  
EMPLOYERS INSURANCE COMPANY  
OF NEVADA,  
Respondent.

No. 44337

**FILED**

SEP 26 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY A. Alvarado  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; David Wall, Judge.

According to appellant Randy Berger, he began treating his industrial injury with Dr. Blaine Purcell in 1995. In 2002, however, respondent Employers Insurance Company of Nevada (EICN) informed him that it was rescinding its authorization for him to treat with Dr. Purcell, because Dr. Purcell was not a member of its new managed care provider network. Berger was told that he must choose a new treating physician from within the network. After Berger administratively appealed, an appeals officer upheld EICN's rescission. The district court subsequently denied judicial review of the appeals officer's decision. Berger has appealed.

On appeal from a district court order denying judicial review in a workers' compensation matter, we, like the district court, review the

appeals officer's decision for abuse of discretion.<sup>1</sup> The appeals officer's purely legal determinations, however, including those of statutory construction, are reviewed de novo.<sup>2</sup> Our review is limited to the record before the appeals officer.<sup>3</sup>

Berger argues that the appeals officer erred as a matter of law in determining that EICN permissibly withdrew its authorization, because he had a substantive right to complete treatment with the same doctor, EICN had no power to rescind its authorization, and in any case, EICN waived any power it had to restrict treatment to network physicians when it initially authorized treatment with Dr. Purcell. Berger also insists that public policy demands that he be allowed to continue treating his industrial injury with Dr. Purcell. We disagree.

Recently, in Valdez v. Employers Insurance Co. of Nevada,<sup>4</sup> we considered whether a workers' compensation claimant has any substantive right to continue treating with a previously authorized physician who is not a member of EICN's new provider network. After reviewing pertinent statutes and legislative history and recognizing issues of public policy, we concluded that no such right exists and that, therefore, unless an

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<sup>1</sup>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 (2003).

<sup>2</sup>Chalue, 119 Nev. at 351-52, 74 P.3d at 597.

<sup>3</sup>Ayala, 119 Nev. at 235, 71 P.3d at 491.

<sup>4</sup>123 Nev. \_\_\_, 162 P.3d 148 (2007).

emergency exception applies,<sup>5</sup> EICN permissibly may refuse to allow treatment with a non-network physician and instead require a claimant to choose a new treating physician from within its provider network.<sup>6</sup>

Accordingly, here, as no emergency exception has been asserted, the appeals officer correctly concluded that EICN permissibly rescinded its authorization for Berger to treat with Dr. Purcell and required Berger to choose a new treating physician. Thus, we affirm the district court's order denying judicial review.

It is so ORDERED.

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

cc: Hon. David Wall, District Judge  
Janet Trost, Settlement Judge  
Nevada Attorney for Injured Workers/Las Vegas  
Beckett, Yott & McCarty/Reno  
Eighth District Court Clerk

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<sup>5</sup>See NRS 616C.090(4); see also NRS 616C.090(3) (noting, also, certain exceptions when a network physician is not available to treat the claimant's condition).

<sup>6</sup>Valdez v. Employers Ins. Co. of Nev., 123 Nev. at \_\_\_, 162 P.3d at 154; NRS 616B.527(1)(c); NRS 616C.090(3).