

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN STATES COMPANIES,
Appellant,
vs.
MANUEL ANDINO,
Respondent.

No. 44428

FILED

JUL 05 2006

ORDER OF REVERSAL

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

This is an appeal from a district court order granting a petition for judicial review in a workers' compensation case and remanding. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Respondent Manuel Andino sustained an injury to his lower back while working for a subsidiary of appellant Western States Companies. On September 27, 2000, Western States accepted Andino's claim for workers' compensation for a "strain" of Andino's lumbar back region. Following several medical examinations, Andino entered into a stipulated settlement agreement with Western States. In the agreement, the parties agreed that Western States had accepted Andino's claim for "thoracic-lumbar strain only." The record indicates that Andino was aware of problems with his lumbar discs and the possible need for surgery, but he never sought a reclassification of his injury prior to signing the settlement agreement. The agreement also provided that Andino could reopen his claim pursuant to NRS 616C.390.

Nearly two years after signing the stipulation, Andino sought to reopen his claim for worsening lower-back pain and to be evaluated for surgery to his lumbar discs. Western States denied Andino's request for reopening. Both a hearing officer and an appeals officer concluded that

because Andino sought reopening for lumbar-disc problems and not for a worsening of lumbar strain, Andino could not reopen his claim unless he provided evidence of worsening of the lumbar strain, which he did not provide.

Upon Andino seeking judicial review, the district court concluded that under NRS 616B.609, the stipulated settlement agreement improperly limited Western States' liability to provide workers' compensation benefits. Therefore, the district court concluded that the provisions in the settlement agreement limiting reopening to thoracic or lumbar strain were void.

Western States appeals, arguing that the district court erred in its determination that NRS 616B.609 voided the portion of the stipulated settlement agreement limiting reopening to thoracic or lumbar strain. We agree.

NRS 616B.609(1)(b) provides that a "contract of employment, insurance, relief benefit, indemnity, or any other device, having for its purpose the waiver or modification of the terms or liability created by chapters 616A to 616D, inclusive, of NRS is void." The statute does not make workers' compensation settlement agreements per se void because to do so would be inconsistent with NRS 616C.495, which permits lump-sum payments for permanent partial disability. NRS 616B.609(1)(b) only makes void those agreements that waive or modify an insurer's liability to provide workers' compensation benefits.

Substantial evidence supports the appeals officer's finding that Western States accepted Andino's claim for lumbar strain, not lumbar

disc problems.¹ The letter of claim acceptance sent to Andino on September 27, 2000, informed him that his claim was accepted for lumbar strain. Andino never challenged that description of his injury. In fact, Andino signed the stipulated settlement agreement, affirming that Western States had accepted his injury as a strain only. Therefore, the industrial injury was lumbar strain.

NRS 616C.390(1) permits reopening of a claim more than one year after closing if the applicant demonstrates that (a) a change of circumstances warrants a change in compensation, (b) “[t]he primary cause of the change of circumstances is the injury for which the claim was originally made,” and (c) the application is accompanied by the necessary certificate from a physician or chiropractor.

Andino’s original injury was for lumbar strain. Therefore, notwithstanding the stipulated settlement agreement, Andino would only be able to reopen his claim for changed circumstances related to lumbar strain. The settlement agreement merely reiterated what the original injury was, and it did not waive or modify Western States’ liability in violation of NRS 616B.609(1)(b).

We conclude that the district court erred when it determined that NRS 616B.609(1)(b) voided the provisions of the stipulated settlement agreement limiting reopening of Andino’s claim to thoracic or lumbar strain. We therefore

¹Because Western States drafted the settlement agreement, Andino also asserts that the agreement should be construed against Western States. However, the appeals officer found that the settlement agreement was not ambiguous, and we conclude that substantial evidence supports that finding.

ORDER the district court's order REVERSED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
David H. Benavidez
Vincent Ochoa
Clark County Clerk