

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY KAZE,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA, A MUTUAL COMPANY,
Respondent.

No. 44462

FILED

MAY 31 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

This appeal challenges a district court order denying a petition for judicial review and affirming an appeals officer's determination that appellant Roy Kaze is not entitled to an adjustment in his monthly disability payment wage base from the maximum wage rates in effect in 1988 to those in effect as of 2000.

On March 7, 1980, Kaze sustained multiple compensable industrial injuries as a result of a chemical exposure in the course and scope of his employment as a miner for Smoky Valley Mining Company.¹ In May of 1988, the insurer placed Kaze on permanent total disability (PTD) and awarded Kaze monthly disability benefits based on the maximum wage rates in effect in 1980. Following this court's 1987 decision in SIIS v. Harrison,² construing NRS 616.625(1) (now

¹We have recited only those facts that are necessary to our disposition of appellant's contentions.

²103 Nev. 543, 746 P.2d 1095 (1987).

616C.425(1)), the parties, in 1989, stipulated to a PTD award based upon the 1988 compensation levels.

In 2000, Kaze was diagnosed with diabetes, and he requested that the insurer increase his benefits to reflect the maximum wage rates in effect in 2000 due to the onset of his diabetic condition. The insurer denied his requests, and ultimately, the appeals officer found that the new condition did not warrant an increase in Kaze's PTD benefits. The appeals officer concluded that the record failed to support a finding that the diabetes resulted in physical incapacitation that would prevent Kaze from engaging in gainful employment. Rather, the appeals officer concluded that Kaze had been permanently and totally disabled since 1988 and had been receiving benefits accordingly. The district court affirmed the appeals officer's decision denying Kaze's request to adjust his PTD benefits to reflect the rates in effect as of 2000.

On appeal, Kaze asserts that under NRS 616.625(1) and Harrison, he is entitled to an adjustment in his monthly disability payment wage base from the maximum wage rates in effect in 1988 to those in effect as of 2000, because of the onset of his diabetic condition in 2000. At all times relevant to this case, NRS 616.625(1) provided:

The amount of compensation and benefits and the person or persons entitled thereto must be determined as of the date of the accident or injury to the employee, and their rights thereto become fixed as of that date.

As noted above, this court interpreted this statutory provision in Harrison and required that the subsequent disability from an injury be calculated as of the date of disability rather than the date of the

injury/exposure.³ However, the 1993 Legislature, in abrogating our holding in Harrison, added NRS 616.625(2). The current statutory provision provides as follows:

If the employee incurs a subsequent injury or disability that primarily arises from a previous accident or injury that arose out of and in the course of his employment, the date of the previous accident or injury must be used to determine the amount of compensation and benefits to which the claimant is entitled.

Despite the enactment of this statutory provision, Kaze contends that his benefits should be adjusted upward to 2000 wage levels because the diabetic condition constitutes a second disability and is related to the original accident. In this, he claims that NRS 616.625(2) does not preclude the adjustment because his rights to have his disability benefits adjusted under Harrison vested when the insurer and his counsel agreed to the 1989 stipulation.


We disagree. First, the stipulation does not, as Kaze suggests, allow him to reopen his claim and upgrade his benefits in the event of the development of a new medical condition. Rather, the stipulation only provides that it was not “intended to foreclose any adjustments in the wage base for monthly disability payments or any related payments that may be provided for by law in the future.” Here, NRS 616.625(2) does not allow for an increase in Kaze’s benefits. Second, while Kaze’s industrial injury occurred in 1980, the onset of the diabetic condition and the reopening of his claim did not occur until 2000, after the enactment of the

³Id. at 546, 746 P.2d at 1097.

1993 amendments, which abrogated our 1987 decision in Harrison. Third, using NRS 616.625 as amended in 1993 does not constitute retroactive application, taking away or impairing any vested right because the claimed disability post-dates the statute.

Finally, we conclude that substantial evidence supports the appeals officer's factual finding that the onset of diabetes did not result in a physical incapacitation. Thus, we concur with the appeals officer's finding that Kaze has been permanently and totally disabled since the 1980's and although his diabetes is otherwise a compensable sequela of the original industrial condition, there exists no legal basis to disturb the amount of PTD benefits based on the scenario present in this case. Accordingly, we affirm the district court's order.

IT IS SO ORDERED.


_____, C.J.
Maupin


_____, J.
Hardesty


_____, J.
Saitta

cc: First Judicial District Court Dept. 1, District Judge
Lester H. Berkson, Settlement Judge
Larry C. Johns
Beckett, Yott & McCarty/Reno
Carson City Clerk