

IN THE SUPREME COURT OF THE STATE OF NEVADA

LIBERTY MUTUAL; AND WYNN
RESORTS, LLC,
Appellants,
vs.
KEVIN DAVIS,
Respondent.

No. 45984

FILED

MAR 07 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order granting judicial review, reversing an appeals officer's decision, and remanding the claim to the insurer to pay workers' compensation benefits for the period of August 27, 2004 through October 22, 2004. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Respondent Kevin Davis sustained an industrial injury in the course and scope of his employment as an electrician for appellant Wynn Resorts, LLC, on October 21, 2003.¹ Wynn Resorts is a self-insured employer for workers' compensation purposes, and appellant Liberty Mutual acts as its industrial insurance administrator.

Following Davis' accident, the insurer accepted Davis' workers' compensation claim for his back, hip, and left leg. After Davis underwent several unsuccessful treatments, Davis' doctor recommended back surgery. During the course of his treatments, Davis underwent several medical tests, one of which revealed a non-industrial liver

¹As the parties are familiar with the facts of this case, we have recited only those facts that are necessary to our disposition of the issues presented.

condition that had to be treated before the surgery. The insurer proceeded to suspend Davis' benefits pending resolution of the liver condition. When a physician approved Davis to proceed with surgery approximately two months later, the insurer reinstated his benefits.

Meanwhile, Davis administratively appealed the suspension of his benefits. Both the hearing officer and the appeals officer affirmed the suspension. The appeals officer noted that pursuant to NRS 616C.230(5), benefits must be suspended if a claimant is unable to undergo treatment because of a non-industrial injury which the claimant is able to correct. The appeals officer concluded that Davis was unable to undergo back surgery for non-industrial reasons, and that it was within his power to correct this non-industrial condition. Therefore, the appeals officer determined that the insurer properly suspended Davis' benefits until such time as Davis was able to resume treatment for his industrial injury. In reversing the appeals officer's decision, the district court concluded that NRS 616C.230(5) justifies the suspension of benefits only when an injured worker has an immediate ability to correct the non-industrial medical condition and refuses to do so, or delays in correcting the non-industrial condition.

On appeal, Liberty Mutual and Wynn Resorts challenge the district court's interpretation of NRS 616C.230(5). The construction of a statute is a question of law which this court reviews de novo.² NRS 616C.230(5) specifically provides:

²Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 545, 2 P.3d 850, 852 (2000).

An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The appellants are correct, in that NRS 616C.230(5) contains no language allowing a suspension of benefits only if there is an immediate ability to correct the non-industrial condition. However, a reading of the statute as a whole supports the district court's interpretation of NRS 616C.230(5).³ In this, we note that NRS 616C.230 sets forth various circumstances in which an employee is ineligible for workers' compensation benefits. The sections preceding section 5 generally prohibit the payment of benefits due to a willful or intentional act of the employee. Just as NRS 616C.230(1)-(4) only prohibit the payment of benefits due to a willful or unreasonable act of the employee, we conclude that NRS 616C.230(5) only allows for the suspension of benefits where the employee fails to act to correct the non-industrial injury.


The legislative history surrounding NRS 616C.230 further supports the district court's interpretation. At a hearing regarding this statutory provision, Senator Lori L. Brown indicated "that the committee's

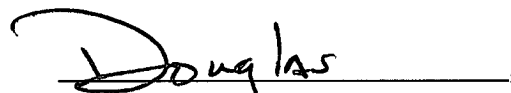
³Building & Constr. Trades v. Public Works, 108 Nev. 605, 610, 836 P.2d 633, 636 (1992).

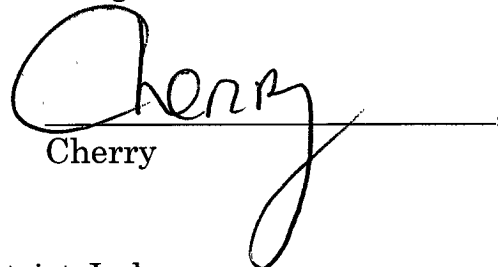
intention was that, if someone can do something about their condition and does not, they would lose benefits.”⁴ This statement suggests that the Legislature intended to allow for the suspension of benefits only if the employee chose not to address the non-industrial medical condition.

Based on the foregoing, we conclude that the district court did not err in its interpretation of NRS 616C.230(5). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Sally L. Loehrer, District Judge
Howard Roitman, Settlement Judge
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Law Offices of Virginia L. Hunt
Eighth District Court Clerk

⁴Hearing on S.B. 316 Before the Senate Comm. on Commerce and Labor, 67th Leg. (Nev., June 19, 1993).

⁵We have considered appellants’ other arguments on appeal and conclude they lack merit. Specifically, we conclude that the respondent did not waive his right to challenge the suspension or his right to defend the district court’s order by accepting a lump-sum payment.