

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARREL THORN,
Appellant,

vs.

NON-FERROUS BOLT &
MANUFACTURING; AND THE STATE OF
NEVADA, DEPARTMENT OF BUSINESS
AND INDUSTRY, DIVISION OF
INDUSTRIAL RELATIONS,
Respondents.¹

No. 46189

FILED

AUG 22 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal challenging a district court order denying judicial review of an administrative decision. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In August 1999, appellant Darrel Thorn filed a complaint with respondent, the Nevada Division of Industrial Relations (DIR). In his complaint, Thorn asserted that his former employer, respondent Non-Ferrous Bolt & Manufacturing, had committed perjury when testifying before an appeals officer in a dispute over whether Thorn's workers' compensation claim was properly denied, at least in part, for his alleged failure to timely provide notice of his injury and file the claim.

In particular, Thorn's complaint pointed to the appeals officer's findings in paragraphs two through eight. Those paragraphs included findings that, despite being aware of the workers' compensation

¹The clerk of this court shall amend the caption on this court's docket so that it is consistent with the caption on this order.

laws and being twice orally notified of Thorn's December 1997 back injury,² Thorn's supervisor at Non-Ferrous Bolt failed to promptly provide Thorn with any claim forms and told Thorn that he believed any claim would be denied as untimely, apparently because he believed that Thorn had reported a month-old November 1997 injury. Further, the appeals officer found that when the Non-Ferrous Bolt CEO, who was also "very familiar" with workers' compensation laws, was notified in January 1998 of Thorn's injury, instead of providing Thorn with any claim forms, he arranged for Thorn to see a chiropractor. According to the appeals officer, Thorn was treated by the chiropractor until the expenses became excessive; on January 22, 1998, the CEO provided to Thorn the appropriate workers' compensation claim forms. The appeals officer determined that the untimeliness of Thorn's notice of injury was excused because he was "under the erroneous impression" that he could not file a claim, that he had credibly testified as to having suffered an industrial injury in December 1997, and that he had timely filed his claim.

Based on this evidence and the hearing testimony, Thorn requested that the DIR impose an administrative fine and a benefit penalty on Non-Ferrous Bolt in accordance with former NRS 616D.120, apparently for inducing him to forgo reporting a claim. The DIR determined that no violation of former NRS 616D.120(1)(a) occurred because, although Non-Ferrous Bolt had discouraged Thorn from promptly

²In paragraph one, the appeals officer found that Thorn had credibly testified as to orally notifying his supervisor of a separate November 1997 back injury, but that Thorn had not filled out any paperwork, sought medical care, or missed any work due to the injury.

filing a claim, that action did not amount to “fraud, coercion, duress, or undue influence,” as required under the statute. Further, the DIR noted that Non-Ferrous Bolt had obtained treatment for Thorn before a claim was filed and that Non-Ferrous Bolt had not actually prevented Thorn from timely filing a claim, which was ultimately accepted.

Thorn, through counsel, petitioned the district court for judicial review of the DIR determination, arguing that the hearing transcript and the appeals officer’s decision clearly demonstrated the impropriety of Non-Ferrous Bolt’s actions, warranting a penalty. The petition was denied. Consequently, Thorn appeals.

In an appeal from a district court order denying a petition for judicial review, this court, like the district court, examines the administrative decision for abuse of discretion, searching the record to determine if any factual finding lacks substantial supporting evidence.³ “Substantial evidence is that ‘which a reasonable person might accept as

³Construction 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); SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).

It appears that the district court hearing was not recorded, and thus that no transcripts are available. In any case, because our review of the administrative decision is limited to the record before the agency, Ayala, 119 Nev. at 235, 71 P.3d at 491-92, we conclude that no transcript of the district court hearing is necessary to our review of this matter. See also Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (recognizing that this court may consider matters that are included in the record on appeal). Accordingly, Thorn’s transcript request is denied.

adequate to support a conclusion.”⁴ We will not substitute our judgment for that of the administrative agency as to the weight of the evidence or on issues of credibility, and the agency’s fact-based legal determinations are entitled to deference.⁵

Former NRS 616D.120(1)(a)(1) provided that an administrative fine and penalty could be imposed on an employer if the employer, “[t]hrough fraud, coercion, duress or undue influence, [i]nduced a claimant to fail to report an accidental injury or occupational disease.”⁶ Here, the appeals officer’s decision and the transcript of the hearing before the appeals officer supports the DIR’s decision that Non-Ferrous Bolt’s failure to promptly advise Thorn of his right to file a claim and to provide

⁴Ayala, 119 Nev. at 235, 71 P.3d at 491 (quoting SIIS v. Montoya, 109 Nev. 1029, 1032, 862 P.2d 1197, 1199 (1993)).

⁵Chalue, 119 Nev. at 352, 74 P.3d at 597 (quoting United Exposition Service Co. v. SIIS, 109 Nev. 421, 425, 851 P.2d 423, 425 (1993)); Ayala, 119 Nev. at 235, 71 P.3d at 491; see also Engel, 114 Nev. at 1374, 971 P.2d at 795.

⁶See 1999 Nev. Stat., ch. 388, § 68.8, at 1796-97. We note that, in light of Thorn’s allegations, none of the other actions for which a penalty could be imposed under former NRS 616D.120(3) appear to exist here. See id. (noting that penalties could be imposed for violations of former NRS 616D.120(1)(a) – (d), which involve unjustifiably inducing a claimant to accept an amount less than reasonable or due him, refusing to pay an amount found due or to process a claim, and making it necessary to initiate administrative proceedings to obtain an amount due). In any case, the DIR’s decision indicating that Non-Ferrous Bolt’s actions were not unjustified is, as explained above, supported by substantial evidence. Accordingly, the DIR did not improperly deny Thorn a penalty for any other actions listed under NRS 616D.120(3).

him with the proper forms did not amount to "fraud, coercion, duress or undue influence." At the hearing, Non-Ferrous Bolt's CEO and supervisor explained that they had not promptly provided Thorn with the forms and advised him to file a claim because it was not clear that he was alleging an industrial injury or that any workers' compensation claim would be accepted, and that they had attempted nonetheless to obtain care for him.

Specifically, the supervisor claimed that he did not remember Thorn notifying him of any injury until December 23, 1997, when, according to the supervisor, Thorn indicated that he thought he had injured himself one month before that date. Believing that Thorn could not file a claim for a month-old injury, the supervisor did not provide any claim forms and allowed Thorn to rest over the weekend to see whether his pains would subside. When Thorn returned to work in January 1998 with continued complaints, the supervisor testified, he took Thorn to see the CEO, with whom Thorn had a special, work-independent, relationship.

The CEO averred that Thorn, his neighbor, came to his house to complain to him of an unidentifiable pain in November 1997 but did not indicate that the pain might be work-related. Thus, the CEO claimed, when Thorn came to see him in January regarding his injury, it was not clear, in light of his similar prior complaints, that Thorn was asserting that he had sustained a work-related injury. Consequently, the CEO offered to send Thorn to a chiropractor and to pay for his treatment. Moreover, the CEO confirmed that, although it was unclear why, Thorn was kept on the payroll through much of February 1998, even though Thorn had not, and has not, worked for Non-Ferrous Bolt since December 1997. But when the chiropractor expenses became more than anticipated,

the CEO gave Thorn a form to complete to obtain workers' compensation; apparently, Thorn was removed from the payroll approximately one month later.

On appeal, Thorn argues that the supervisor's and CEO's actions demonstrate that Non-Ferrous Bolt unduly influenced and coerced him not to timely report his injury by failing to promptly provide him with the proper forms or advise him that he needed to pursue workers' compensation and sending him to a chiropractor instead. Thorn also points out that Non-Ferrous Bolt failed to admit to its insurer that any untimeliness should be excused and asserts that this action caused his claim to initially be denied.

While we agree with Thorn that the ultimate excuse of his untimely notice is not relevant to whether a penalty should be imposed for inducing him not to report the injury, and while we sympathize with Thorn's difficulties in obtaining prompt workers' compensation benefits, we cannot conclude that the DIR's determination lacks substantial evidence. Although Non-Ferrous Bolt's actions in discouraging Thorn from filing a claim potentially could be perceived as improper under the penalty statute, a reasonable person could also accept Non-Ferrous Bolt's reasons for those actions as adequately supporting a conclusion that the actions were justified by the circumstances, so that the actions did not amount to "coercion" or "undue influence." Further, despite Thorn's assertion to the contrary, the appeals officer did not expressly find the supervisor's and CEO's testimonies incredible. Instead, the appeals officer appears to have accepted the individual testimony as presenting a somewhat consistent account of the relevant events. Accordingly, as this

court may not reweigh the evidence, and as the DIR's fact-based conclusion that no fraud, coercion, duress, or undue influence occurred is entitled to deference, we affirm the district court's order denying judicial review.

It is so ORDERED.

Maupin J.
Maupin
Gibbons J.
Gibbons
Hardesty J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Darrel Thorn
John F. Wiles
Clark County Clerk
Sharon Howard, Court Reporter