

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBIN A. DREW,
Appellant,
vs.
MANPOWER OF SOUTHERN
NEVADA,
Respondent.

No. 47020

FILED

FEB 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is a proper person appeal from a district court order granting a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Robin A. Drew suffered an industrial injury to her right wrist in 2001, which resulted in a permanent partial disability. Consequently, Drew was entitled to vocational rehabilitation benefits as part of her ensuing workers' compensation claim. On July 16, 2004, however, respondent Manpower of Southern Nevada's (the insurer's) administrator suspended all of Drew's vocational rehabilitation benefits, based on her lack of cooperation.

Drew administratively appealed the suspension letter, and on September 15, 2004, a hearing officer reversed the suspension, directing the insurer to, among other things, reinstate vocational rehabilitation maintenance benefits, retroactively from July 17, 2004, with interest. The insurer administratively appealed, and while that appeal was pending, the insurer paid Drew retroactive maintenance benefits.

The insurer's payment did not include interest, however, and Drew challenged, before the Division of Industrial Relations (DIR), the insurer's failure to pay the interest ordered by the hearing officer. Meanwhile, on January 3, 2005, an appeals officer affirmed the suspension, reversing the hearing officer's decision directing maintenance benefits and interest.¹

Thereafter, the DIR, in considering Drew's request that a benefit penalty be imposed on the insurer for its failure to comply with the hearing officer's order directing it to pay Drew interest, determined that no penalty was warranted. Drew administratively appealed, and an appeals officer determined that the DIR incorrectly found that no penalty was due, as the insurer deliberately had failed to pay Drew the "compensation" to which she was entitled at the time.² The insurer petitioned for judicial review, and the district court determined that Drew was not entitled to a benefit penalty for the insurer's failure to pay interest pending its administrative appeal. Drew appeals.

¹The merits of the appeals officer's suspension decision were ultimately considered and finally resolved by this court in Drew v. Manpower of Southern Nevada, Docket No. 45963 (Order Affirming in Part, Reversing in Part and Remanding, June 30, 2006; Order Denying En Banc Reconsideration, December 26, 2006).

²Despite the insurer's contention to the contrary, the appeals officer did not order the insurer to pay interest, and this appeal does not raise the issue of whether Drew ultimately was entitled to interest. Instead, this appeal is based on whether the insurer was obligated to pay Drew the interest that the hearing officer found due, at that time, pending the insurer's administrative appeal.

This court, like the district court, examines administrative decisions for clear legal error or arbitrary abuse of discretion.³ The appeals officer's fact-based conclusions of law are entitled to deference and will not be disturbed if they are supported by substantial evidence.⁴ Substantial evidence is evidence that "a reasonable person might accept as adequate to support a conclusion."⁵ Further, this court may not substitute its judgment for that of the appeals officer as to the weight of the evidence on a question of fact.⁶ Questions of law, including issues of statutory interpretation, however, are reviewed de novo.⁷ Our review of the administrative decision is limited to the record before the agency.⁸

NRS 616D.120(3) requires the DIR to impose on the insurer a fine and penalty, if the insurer "[r]efused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be due [her] by a hearing officer," when the refusal or delay occurred more than thirty days after the date of the hearing officer's decision, unless a stay is

³Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003); SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).

⁴Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

⁵Id., at 235, 71 P.3d at 491-92 (internal quotations omitted).

⁶Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839, 842 (1997).

⁷Ayala, 119 Nev. at 235, 71 P.3d at 491-92; Engel, 114 Nev. at 1374, 971 P.2d at 795.

⁸NRS 233B.135(1)(b); see, e.g., Diaz v. Golden Nugget, 103 Nev. 152, 734 P.2d 720 (1987).

entered.⁹ Here, even if interest is not “compensation,” as the insurer claims,¹⁰ it is “other relief” found due by the hearing officer.¹¹ Accordingly, as the insurer did not obtain any stay of the hearing officer’s order pending its administrative appeal, the insurer was required to pay the

⁹NRS 616D.120(1)(c)(2).

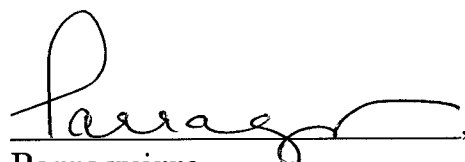
¹⁰See NAC 616D.305(2) (defining “payment of compensation”).

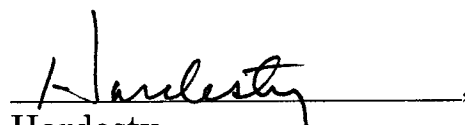
¹¹See Black’s Law Dictionary 1317, 1320 (8th ed. 2004) (defining, respectively, “relief” as “[t]he redress or benefit, esp. equitable in nature . . . that a party asks of a court” or as a “remedy,” and “remedy” as “[t]he means of enforcing a right or preventing or redressing a wrong; legal or equitable relief”). Although the Legislature did not explain why it added the phrase “or other relief” to NRS 616D.120(1) in 2003, see 2003 Nev. Stat., ch. 305, § 14, at 1677-78 and Legislative minutes regarding A.B. 168 (2003), it explained that the interest statute was enacted in order to compensate a claimant for delay in obtaining workers’ compensation. See Hearing on A.B. 103 Before the Assembly Labor and Mgmt. Comm., 65th Leg. (Nev., March 7, 1989); Hearing on A.B. 103 Before the Senate Commerce and Labor Comm., 65th Leg. (Nev., April 21, 1989) (indicating that the statute was enacted in response to this court’s decisions in Weaver v. SIIS, 104 Nev. 305, 756 P.2d 1195 (1988) and SIIS v. Wrenn, 104 Nev. 536, 762 P.2d 884 (1988), which concluded that, absent legislative authority, no interest was available for delay in workers’ compensation matters). Accordingly, NRS 616C.335 interest was part of the relief the hearing officer found due, and thus, it constituted “other relief” due to Drew pending the outcome of the administrative appeal. Cf. Peterman v. State Farm Mut. Auto Ins. Co., 8 P.3d 549, 554 (Colo. Ct. App. 2000) (recognizing that, unless a statute provides otherwise, trial-court-awarded post-judgment interest is payable during the pendency of an appeal from the judgment); Barry v. Lindner, 119 Nev. 661, 670 n.14, 81 P.3d 537, 543 n.14 (2003) (noting that this court will affirm a district court’s order if the district court, despite basing a decision on incorrect reasoning, reached the correct result).


interest pending that appeal, regardless of the appeal's ultimate outcome.¹²

Because the insurer failed to pay the interest when due, and because the appeals officer's determination that the insurer's failure to do so was not "reasonable delay," but rather deliberate, is supported by substantial evidence, the district court erred in granting the insurer's petition for judicial review. Therefore, we reverse the district court's order.¹³

It is so ORDERED.¹⁴


Parraguirre, J.


Hardesty, J.


Saitta, J.

¹²Although the insurer argues that it was entitled to rely on the appeals officer's decision reversing the hearing officer, that decision was rendered after compliance with the hearing officer's determination was due under NRS 616D.120(1)(c). Accordingly, the insurer was not entitled to rely on the appeals officer's decision in complying with the hearing officer's determination.

¹³We have considered the insurer's other arguments, including those regarding NRS 616C.380's installment payment provisions, and we concluded that they are without merit.

¹⁴In light of this order, we vacate our August 3, 2006 stay.

cc: Hon. Mark R. Denton, District Judge
Robin A. Drew
Lynne & Associates
Eighth District Court Clerk