

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 47594

FILED

FEB 08 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Previously, an appeals officer affirmed the suspension of appellant Robin A. Drew's vocational rehabilitation benefits. Drew petitioned the district court for judicial review of that decision.¹

While the matter was pending in the district court, Drew, on January 10, 2005, requested respondent Manpower of Southern Nevada

¹On August 25, 2005, the district court denied judicial review, and Drew then appealed the matter to this court, where it remained pending until June 30, 2006. 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).

(the insurer) to reinstate her benefits. After the insurer denied the request and terminated Drew's benefits, Drew administratively appealed. On November 30, 2005, an appeals officer affirmed the suspension's continuation and reversed the benefits' termination. In the appeals officer's order, the insurer was directed to schedule a meeting and, upon Drew's good faith cooperation in the rehabilitation, reinstate benefits.

Meanwhile, however, on June 11, 2005, Drew again requested that her benefits be reinstated, also asking the insurer to approve a vocational rehabilitation plan that she had created with the Nevada Department of Employment, Training, and Rehabilitation, Bureau of Vocational Rehabilitation (BVR). When she received no response, Drew requested an administrative hearing. The hearing officer dismissed the matter, based on the pending litigation, and Drew administratively appealed.

The appeals officer, on December 16, 2005, determined that the suspension issues were duplicative of the issues already reviewed in Drew's administrative appeal regarding the insurer's denial of her January 10 reinstatement request. Further, the appeals officer determined that, because the November 30 appeals officer order had reviewed the BVR vocational rehabilitation plan issue and remanded the matter to the insurer for reconsideration, that issue was not ripe for review. Accordingly, the appeals officer dismissed the entire matter without prejudice. Drew petitioned for judicial review, which the district court denied. Drew appeals.

This court, like the district court, examines administrative decisions for clear legal error or arbitrary abuse of discretion.² While the appeals officer's fact-based conclusions of law are entitled to deference, questions of law are reviewed de novo.³ Our review of the administrative decision is limited to the record before the agency.⁴

The appeals officer properly dismissed Drew's administrative appeal because it presented issues that duplicated those presented in the administrative appeal regarding the denial of her January 10 request. Although whether Drew was cooperating sufficiently to reinstate her benefits as of January 10 is a different issue than whether she took any steps between January 10 and June 11 that warranted reinstatement, the mere fact that Drew was able to form a vocational rehabilitation plan with the BVR does not necessarily show cooperation with the insurer or its counselor. As a result, it was not possible for the insurer to determine, based solely on Drew's June 11 request, whether her benefits should be reinstated. And even though the insurer should have at least considered Drew's reinstatement request, there was no need for the appeals officer to remand the matter for the insurer's consideration, because the insurer

²Construction 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).

³Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003); Engel, 114 Nev. at 1374, 971 P.2d at 795.

⁴NRS 233B.135(1)(b); see also Diaz v. Golden Nugget, 103 Nev. 152, 734 P.2d 720 (1987).

was already complying with the November 30 order to schedule a meeting to determine whether benefits should be reinstated, rendering the June 11 reinstatement matter moot.⁵

Further, based on the documents the parties have submitted to this court, by the time the matter was heard in the district court, the suspension had been lifted as a result of the November 30 order. Accordingly, as benefits had been reinstated, the court was unable to afford Drew any relief. Thus, for this reason also, the court properly denied judicial review as to the reinstatement issue.⁶

Regarding the insurer's refusal to approve the BVR vocational rehabilitation plan, because Drew's benefits were suspended at the time she requested the plan's approval, the insurer was not required to consider the request. Moreover, since the November 30 order contemplated further rehabilitation proceedings, the appeals officer properly determined that

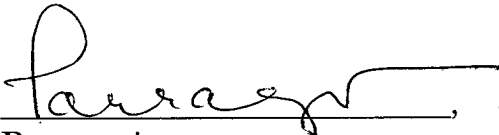
⁵See University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (“[T]he duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it.” (quoting NCAA v. University of Nevada, 97 Nev. 56, 57-58, 624 P.2d 10, 10 (1981))); see also NCAA, 97 Nev. at 58, 624 P.2d at 11 (“Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events.”).

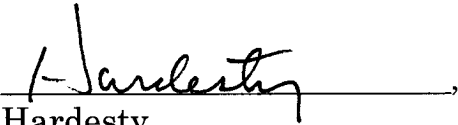
⁶University Sys., 120 Nev. at 720, 100 P.3d at 186.


the matter was not ripe for review.⁷ Although the November 30 order did not specifically mention the BVR vocational rehabilitation plan, that order directed the insurer to schedule a meeting and to reinstate benefits upon cooperation, which ultimately occurred. Thus, the plan is more appropriately considered in the context of the ongoing rehabilitation, and the appeals officer properly dismissed Drew's appeal as to this issue.

Accordingly, the district court correctly denied judicial review, and we affirm the court's order.

It is so ORDERED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Robin A. Drew
Lynne & Associates
Eighth District Court Clerk

⁷See Resnick v. Nevada Gaming Commission, 104 Nev. 60, 66, 752 P.2d 229, 233 (1988) (observing that "litigated matters must present an existing controversy, not merely the prospect of a future problem") (internal quotation marks omitted).