

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBIN A. DREW,
Appellant,
vs.
NEVADA INDUSTRIAL INSURANCE
REGULATION DIVISION OF
INDUSTRIAL RELATIONS,
Respondent.

No. 47621

FILED

APR 09 2007

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order denying judicial review of an administrative benefit penalty decision in a workers' compensation matter. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Robin A. Drew was awarded a benefit penalty under NRS 616D.120 for a workers' compensation insurer's failure to pay interest, as was directed by a hearing officer, pending an administrative appeal. When the insurer then, according to Drew, unreasonably delayed payment of the benefit penalty, Drew asked respondent, the Nevada Department of Business and Industry's Division of Industrial Relations (DIR), to impose another benefit penalty on the insurer.

The DIR determined that, under NRS 616D.120, a subsequent benefit penalty could not be imposed for the failure to timely pay an original benefit penalty. Instead, the DIR noted, it was authorized to

bring a civil action to collect an unpaid penalty,¹ and it stated that it would do so once the then-pending challenges to the original benefit penalty had concluded, if the penalty remained unpaid at that time.

Drew administratively appealed the DIR's determination, and an appeals officer found in favor of the DIR. The district court denied Drew's subsequent petition for judicial review, and Drew has appealed.

This court, like the district court, examines administrative decisions for clear legal error or arbitrary abuse of discretion.² Questions of law, including issues of statutory interpretation, are reviewed de novo.³

As this matter is one solely of statutory construction, we look first to the relevant statutory language. When a statute's language is plain and unambiguous, we may not look beyond it for legislative intent; the statute's plain language must simply be given its ordinary meaning.⁴ However, if the statute is ambiguous, meaning that it is susceptible to more than one reasonable interpretation, we may examine the legislation's history and purpose to determine the Legislature's intent.⁵ In interpreting a statute, we give deference to the statutory construction of an agency that is authorized to execute the statute, unless the agency's

¹See NRS 616D.140(5).

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).

³Engel, 114 Nev. at 1374, 971 P.2d at 795.

⁴State, Bus. & Indus. v. Granite Constr., 118 Nev. 83, 87, 40 P.3d 423, 426 (2002).

⁵Id.; Joseph F. Sanson Investment v. 268 Limited, 106 Nev. 429, 432, 795 P.2d 493, 495 (1990).

construction is outside the statutory language when read as a whole, or is otherwise arbitrary and capricious.⁶

NRS 616D.120(3) authorizes the DIR's Administrator to impose a benefit penalty on an insurer, 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 . . . [an] appeals officer . . . or the [DIR] when carrying out its duties pursuant to [NRS] chapters 616A to 617, inclusive."⁷ (Emphasis added.) Accordingly, the issue before us is whether a DIR-imposed benefit penalty is included within the scope of "other relief" found due, so that a second benefit penalty may be imposed for the insurer's failure to timely pay the original penalty.

"Other relief" is not defined in the statutes. Nonetheless, as the DIR recognizes, this term is quite broad. Black's Law Dictionary, for example, defines "relief" as "[t]he redress or benefit, esp[ecially] equitable in nature . . . that a party asks of a court," or as "remedy."⁸ It defines

⁶Cable v. EICON, 122 Nev. 120, 126, 127 P.3d 528, 532 (2006) (noting that subsections of a statute must be read together and other circumstances in which it is inappropriate to give deference to an agency's interpretation); Meridian Gold v. State, Dep't of Taxation, 119 Nev. 630, 635, 81 P.3d 516, 519 (2003).

⁷NRS 616D.120(1)(c). Similarly, NRS 616D.120(3) empowers the DIR to impose a benefit penalty when the insurer has violated NRS 616D.120(1)(e), making "it necessary for a claimant to initiate proceedings pursuant to [NRS] chapters 616A to 616D, inclusive, . . . for compensation or other relief found to be due [her] by . . . [an] appeals officer . . . or the [DIR] when carrying out its duties pursuant to [NRS] chapters 616A to 616D, inclusive."

⁸Black's Law Dictionary 1317 (8th ed. 2004).

“remedy” as “[t]he means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.”⁹ And as the DIR also points out, under NRS 616D.120(3), it is authorized to impose a benefit penalty as the “remedy” for wrongful insurer conduct. Accordingly, when the DIR imposes an NRS 616D.120 benefit penalty as a “remedy,” the benefit penalty is accurately included within the plain language scope of “other relief” found due a claimant by the DIR in carrying out its NRS chapter 616D duties.

Nevertheless, the DIR asserts that the very broadness of the term “other relief” renders that term ambiguous. Given other indicators of legislative intent, the DIR argues, the term should not be interpreted to include a benefit penalty. Even if the term is ambiguous, however, we disagree that a more narrow scope applies.

The DIR traces the history of the benefit penalty to our decision in Falline v. GNLV Corp.,¹⁰ in which we recognized a claimant’s private right to pursue damages in a tort action against an insurer for its negligent or bad faith failure or refusal to pay workers’ compensation claims, noting that, under the former statutes, the claimant had no other remedy. In response to this decision, the DIR explains, the Legislature in 1995 enacted the benefit penalty statute to remedy an injured worker for the wrongful failure to pay, or the delay in making payments of, workers’

⁹Id. at 1320.

¹⁰107 Nev. 1004, 1012-13, 823 P.2d 888, 893-94 (1991).

compensation claims.¹¹ At the same time, it notes, the Legislature limited the claimant's remedy to that statute.¹² Thus, according to the DIR, the benefit penalty was intended to replace tort actions designed to redress failures to timely pay workers' compensation benefits, not penalties. Accordingly, the DIR contends, the scope of "other relief" should be viewed in the context of different types of "compensation," and it should not be expanded to include penalties.

But "other relief" was not originally part of the benefit penalty statute; that language was added in 2003.¹³ Accordingly, it appears that, by adding that term to a statute that already addressed the failure or delay in paying "compensation," the Legislature sought to expand the scope of the statute.¹⁴ Further, although the DIR is authorized to institute a civil action to collect any unpaid benefit penalty,¹⁵ that remedy is not expressly exclusive and any such recovery by the DIR will not necessarily

¹¹See 1995 Nev. Stat., ch. 497, § 13, at 1642-44; Madera v. SIIS, 114 Nev. 253, 956 P.2d 117 (1998).

¹²See NRS 616D.030; 1995 Nev. Stat., ch. 497, § 13, at 1642-44; Madera, 114 Nev. 253, 956 P.2d 117.

¹³The 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).

¹⁴Even Falline speaks in terms of providing "relief" to an injured worker. Falline, 107 Nev. at 1013, 823 P.2d at 894 (recognizing that tort damages would serve two salutary purposes: "worker relief and [insurer] compliance" (emphasis added)).

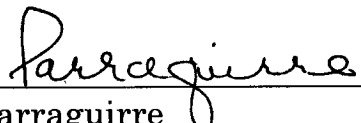
¹⁵See NRS 616D.140(5).

compensate the claimant for the additional delay in obtaining redress or help ensure insurer compliance with DIR orders in the future.


By including, under NRS 616D.120's purview, DIR orders that provide "compensation or other relief" to a claimant in the DIR's exercise of its NRS chapter 616D duties, the Legislature apparently recognized the DIR's power to issue relief under the benefit penalty statute, as no other NRS chapter 616D statute appears to allow the DIR to provide for such remedies. Thus, while not unreasonable, the DIR's interpretation does not accord with the language of the statute as a whole, the purpose of which was apparently to relieve a claimant from wrongful delay in any remedial-type payments, and consequently, its interpretation is not entitled to deference.

Because "other relief" necessarily includes a benefit penalty, the DIR was authorized to impose a benefit penalty for the failure to pay a previously-imposed benefit penalty. Accordingly, we reverse the district court's order denying judicial review, and we remand this matter so that the district court may remand it to the appeals officer for further proceedings in determining whether a second benefit penalty is warranted.

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
Robin A. Drew
John F. Wiles
Eighth District Court Clerk