

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEWIS OLSEN,

No. 35247

Appellant,

vs.

ALBERTSONS,

Respondent.

FILED

OCT 05 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Lewis Olsen's petition for judicial review of an appeals officer's decision. The appeals officer determined that Olsen's acceptance of lump sum payments for compensation and vocational rehabilitation prevented him from receiving permanent total disability status and benefits absent a change in circumstances. Finding no change, the appeals officer affirmed Albertsons' denial.

Olsen challenges the appeals officer's determinations on two grounds. First, because his case was open for vocational rehabilitation purposes, Olsen contends that he did not need to reopen his claim in order to request a change in status. As such, Olsen claims that he had not waived his right to dispute the extent of his disability. Second, Olsen contends that under this court's recent decision in SIIS v. Perez,¹ he satisfied the reopening requirements of NRS 616C.390 and, therefore, this case must be resolved on the merits. We disagree with Olsen on both grounds.

Olsen's acceptance of the lump sum payment

The Nevada Industrial Insurance Act ("NIIA") authorizes the payment of compensation and vocational rehabilitation benefits by way of a lump sum rather than on a periodic basis. This court reviews questions of statutory interpretation de novo.²

¹116 Nev. 296, 994 P.2d 723 (2000).

²Perez, 116 Nev. at 298, 994 P.2d at 724 (citing Maxwell v. SIIS, 109 Nev. 327, 329, 849 P.2d 267, 269 (1993)).

NRS 616C.495(2) delineates a claimant's status after accepting a lump sum compensation payment for a permanent partial disability. First, all of the claimant's compensation benefits terminate. Second, the claimant's acceptance "constitutes a final settlement of all factual and legal issues in the case."³ Thus, the claimant "waives all of his rights regarding the claim, including the right to appeal from the closure of the case or the percentage of his disability."⁴ There are two exceptions to this final settlement: (1) the claimant may reopen his claim under NRS 616C.390 [by demonstrating a change in circumstances], and (2) the claimant may receive "counseling, training or other rehabilitative services provided by the insurer."⁵ In short, Olsen's acceptance of the lump sum compensation payment conclusively established his status as permanently partially disabled absent a change in circumstances.⁶

NRS 616C.595, on the other hand, dictates the consequences of accepting a lump sum payment in lieu of vocational retraining. Specifically, the acceptance of this lump sum payment extinguishes [the injured worker's] right to receive vocational rehabilitation services under his claim.⁷ By accepting the lump sum payment, Olsen acknowledged that he was eligible for vocational rehabilitation. Upon acceptance of the vocational rehabilitation lump sum payment, his claim was fully closed.

Olsen asserts that his claim remained open because he did not accept a lump sum payment for vocational rehabilitation benefits until after he requested total disability benefits. We disagree.

Olsen's assertion directly contradicts the terms of the statute. The statute plainly states that acceptance of the lump sum payment "constitutes a final settlement of all factual and legal issues."⁸ The claimant's remaining rights to reopen the claim and to receive counseling, training and rehabilitative services are separate from the settling of the

³NRS 616C.495(2).

⁴Id. (emphasis added).

⁵Id.

⁶See NRS 616C.390(4); Perez, 116 Nev. at 299, 994 P.2d at 725.

⁷NRS 616C.595(3)(c)(4).

⁸NRS 616C.495(2).

dispute. Even so, Olsen's acceptance of the vocational rehabilitation lump sum payment extinguished his right to receive other separate benefits, save reopening.⁹ Because we presume that Olsen accepted his lump sum payment with full knowledge of the consequences, Olsen's argument must fail.¹⁰

NRS 616C.390 reopening

Olsen contends that the appeals officer erred in determining that he had not satisfied NRS 616C.390's reopening prerequisites. These are factual contentions; therefore, we review the record to determine whether substantial evidence supports the appeals officer's findings.¹¹ Substantial evidence is that quantity and quality of evidence that a reasonable man could accept as adequate to support a conclusion.¹²

NRS 616C.390(4) provides that, when the claimant requests, in writing and within one year of the claim's closing, that the insurer reopen his case, the insurer shall do so only if: "(a) The application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant; and (b) There is clear and convincing evidence that the primary cause of the change of circumstances is the injury for which the claim was originally made."

Recently, in Perez, we determined that there is an additional avenue to reopen a claim. If the claimant can demonstrate newly discovered, non-medical factors that justify his change in status from permanent partial to permanent total disability, the claim can be reopened.¹³

⁹See NRS 616C.595(3)(c)(4).

¹⁰See Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 272, 984 P.2d 756, 759 (1999) (citing First Nat'l Bk. v. Dist. Ct., 75 Nev. 77, 82, 335 P.2d 79, 82, (1959); NRS 616A.020(1); NRS 616B.612(3)) ("An injured employee making a statutory workers' compensation claim is charged with knowledge of the statutory scheme's provisions.").

¹¹NRS 233B.135; SIIS v. Bokelman, 113 Nev. 1116, 1119, 946 P.2d 179, 181 (1997) (citing Installation & Dismantle, Inc. v. SIIS, 110 Nev. 930, 932, 879 P.2d 58, 59 (1994)).

¹²Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 270 (1993) (citing State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986)).

¹³Perez, 116 Nev. at 299, 994 P.2d at 725.


Olsen claims that he has satisfied the Perez reopening requirements because he presented some evidence that he is incapable of meaningfully participating in the workforce. Olsen misreads Perez.

The Perez appeals officer properly reopened Perez's claim because he demonstrated a change in non-medical circumstances from the time that Perez accepted his lump sum payment.¹⁴ We affirmed the appeals officer's award because his determination that those changed circumstances rendered Perez permanently and totally disabled was supported by substantial evidence.¹⁵

The instant case is distinct from Perez because Olsen has not demonstrated any change in circumstances since he accepted the lump sum payment. On the contrary, the record amply reflects that Olsen's current situation is identical to what it was when he accepted the payment. Indeed, Olsen testified that his condition had not changed since he accepted his lump sum compensation payment.

Because substantial evidence supports the appeals officer's decision to affirm Albertsons' refusal to change Olsen's status, the district court properly denied Olsen's petition for judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Ronald D. Parraguirre, District Judge
Greenman Goldberg Raby & Martinez
Gugino & Schwartz
Clark County Clerk

¹⁴Id.

¹⁵Id. at 300, 994 P.2d at 725.