

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICIA GIBBONS,
Appellant,
vs.
CLARK COUNTY SCHOOL DISTRICT,
A POLITICAL SUBDIVISION OF THE
STATE OF NEVADA,
Respondent.

No. 66818

FILED

AUG 31 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a worker's compensation matter. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant Patricia Gibbons was employed by Respondent Clark County School District ("CCSD") as a teacher. On June 29, 2009, Gibbons was robbed at gunpoint in the parking lot of the elementary school where she worked. The assailant knew Gibbons' name, and he threatened to kill Gibbons and her daughter if Gibbons told anyone about the incident. Gibbons immediately reported the crime to school staff and to police.

On July 30, 2009, CCSD issued a notice of claim acceptance for Gibbons' post-traumatic stress disorder citing NRS 616C.180. Gibbons received regular treatment and the claim remained open for over two years thereafter.

In a discharge summary dated February 16, 2012, Donald Johnson, Ph.D., stated that Gibbons "has returned successfully to her previous job as a school teacher for the Clark County School District and has, to a reasonable degree of psychological probability, attained maximum medical improvement. Therefore, she is now stable and

ratable.” Dr. Johnson further stated that he was “of the opinion, given the severity of the incident and protracted nature of treatment, that [Gibbons] is a candidate for a permanent partial disability evaluation from a psychiatric standpoint.”

CCSD subsequently issued a Notice of Intention to Close Claim informing Gibbons that her claim would be closed in 70 days, and that, “[b]ased on the available medical information, the claim will be closed without a Permanent Partial Disability (PPD) evaluation as there is no possibility of a permanent impairment of any kind.” Gibbons appealed the determination to the Nevada Department of Administration Hearings Division.

The hearing officer affirmed CCSD’s determination, concluding that the claim closure was proper because, “based on the date of injury, a rating evaluation was not authorized.” On appeal from the hearing officer’s decision, the appeals officer entered a Decision and Order affirming the hearing officer’s Decision and Order. In reaching her decision, the appeals officer observed that permanent partial disability compensation was not available for stress claims before the Nevada Legislature amended NRS 616C.490 in 2009, and that the legislature did not expressly make the provision allowing permanent partial disability compensation for stress claims retroactive. Thus, based on the fact that Gibbons’ injury preceded the amendment’s October 1, 2009 effective date and that Gibbons’ rights were fixed as of the date of her injury, the appeals officer concluded that “a rating evaluation was not authorized by statute for the instant claim.” Gibbons then filed a petition for judicial review with the district court.

The district court denied Gibbons' petition, concluding that "[t]he Appeals Officer correctly held claim closure without a PPD rating was proper" based on the law as it existed on the date of Gibbons' injury. This appeal followed.

This court's role in reviewing an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood Machine, Inc.*, 129 Nev. ___, ___, 312 P.3d 479, 482 (2013). Therefore, this court is limited to the record before the agency and cannot substitute its judgment for that of the agency on issues concerning the weight of the evidence on questions of fact. *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 282, 183 P.3d 126, 128 (2008). However, this court reviews conclusions of law, including the administrative construction of statutes, de novo. *Elizondo*, 129 Nev. at ___, 312 P.3d at 482.

Under NRS 616C.425(1), "[t]he amount of compensation and benefits and the person or persons entitled thereto must be determined as of the date of the accident or injury to the employee, and their rights thereto become fixed as of that date." On the date of Gibbons' injury, NRS 616C.490(5) provided, in relevant part, that "[n]o factors other than the degree of physical impairment of the whole man may be considered in calculating the entitled to compensation for a permanent partial disability." NRS 616C.490(5) (2002). Thus, a worker's compensation claimant could not obtain a permanent partial disability award for a psychological condition. *Id.*; see also *Maxwell v. SIIS*, 109 Nev. 327, 331, 849 P.2d 267, 270 (1993). However, in 2009 the Nevada Legislature amended NRS 616C.490(5) to provide that, "[e]xcept in the case of claims

accepted pursuant to NRS 616C.180,¹ no factors other than the degree of physical impairment of the whole man may be considered in calculating the entitlement to compensation for a permanent partial disability.” 2009 Nev. Stat., ch. 500, § 7, at 3037. The amendment became effective October 1, 2009 — three months after Gibbons was robbed. 2009 Nev. Stat., ch. 500, § 17, at 3047. Consequently, Gibbons is not entitled to permanent partial disability compensation for her psychological condition unless NRS 616C.490(5) applies retroactively. We conclude it does not.


“As a general matter, statutes are presumptively prospective.” *Madera v. State Indus. Ins. System*, 114 Nev. 253, 257, 956 P.2d 117, 120 (1998). “This general rule does not apply to statutes that do not change substantive rights and instead relate solely to remedies and procedure, however; in these instances, a statute will be applied to any cases pending when it is enacted.” *Valdez v. Employers Ins. Co. of Nev.*, 123 Nev. 170, 179-80, 162 P.3d 148, 154 (2007). Accordingly, the Nevada Supreme Court has held that, absent a clear legislative intent to give an amendment retroactive effect, acts increasing worker’s compensation benefits or permitting compensation under circumstances not previously allowed do not apply to claims arising from injuries incurred before the statute’s effective date. See *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 138 P.3d 507 (2006); *Frick v. Nevada Industrial Comm’n*, 95 Nev. 263, 592 P.2d 948 (1979); *Viriden v. Smith*, 46 Nev. 208, 210 P. 129 (1922).

¹NRS 616C.180(1) provides that, “[e]xcept as otherwise provided in this section, an injury or disease sustained by an employee that is caused by stress is compensable . . . if it arose out of and in the course of his or her employment.”

Here, the 2009 amendment to NRS 616C.490(5) does not relate solely to remedies and procedure, as it provides for permanent partial disability compensation under circumstances not previously allowed. Consequently, this court may give the 2009 amendment to NRS 616C.490(5) retroactive effect only if the legislature demonstrated an intent for the amendment to operate retroactively. But neither the text of NRS 616C.490(5) nor the legislative history underlying the 2009 amendment provide any indication that the Nevada Legislature so intended. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kenneth C. Cory, District Judge
Persi J. Mishel, Settlement Judge
Workers' Comp Lawyers of Nevada
Clark County School District Legal Department
Eighth District Court Clerk