

IN THE SUPREME COURT OF THE STATE OF NEVADA

VENCOR, D/B/A TORREY PINES CARE
CENTER,
Appellant,
vs.
JOAN GAJEWSKI,
Respondent.

No. 37178

FILED

JUL 10 2002

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. Smith*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying judicial review of an administrative appeals officer's determination that respondent Joan Gajewski is entitled to temporary total disability (TTD) payments for the period November 4, 1997 through June 28, 1999. Appellant Vencor, d.b.a. Torrey Pines Care Center (Vencor), a self-insured employer, employed Gajewski from March 1996 until May 1997, when it terminated her. On March 26, 1997, prior to her termination, Gajewski injured her back on the job. She subsequently filed a workers' compensation claim for TTD benefits and returned to work on temporary restricted duty. W.R. Gibbens, Inc., Vencor's insurance administrator, denied Gajewski's claim for TTD benefits.

Several weeks after W.R. Gibbens denied Gajewski's claim for TTD benefits, Vencor terminated Gajewski's employment. A few weeks later, Gajewski underwent back surgery. In June 1997, a Department of Administration hearing officer reversed the insurer's denial of Gajewski's claim. In November 1997, Gajewski's doctor released her to light duty work. Vencor appealed the hearing officer's decision and an appeals officer affirmed Gajewski's TTD benefits in December 1998. Vencor then petitioned for judicial review, but the district court denied the petition.

Vencor now argues on appeal that the appeals officer erred as a matter of law for failing to determine whether or not Gajewski was terminated for cause before deciding to affirm her award of TTD benefits.

This court reviews errors of law de novo.¹ Here, the appeals officer did not make a determination as to whether Vencor terminated Gajewski for cause. While employees injured on the job are generally entitled to TTD benefits,² this court established in Hudson v. Horseshoe Club Operating Co. that before awarding TTD benefits, an appeals officer should determine the reason an injured employee was terminated post-injury.³ “[A]n employer who discharges an injured employee for cause is not liable for that employee’s disability benefits unless the record establishes that the employee’s disability rather than her discharge caused her wage loss or inability to obtain work.”⁴ The appeals officer, therefore, should have made a determination as to whether Vencor terminated Gajewski for cause before affirming her TTD benefits award.

¹State, Tax Comm’n v. Nevada Cement Co., 116 Nev. 877, 880, 8 P.3d 147, 149 (2000) (“Although this court shall not substitute its judgment for that of the agency on a question of fact, review of questions of law . . . is de novo.”); Hudson v. Horseshoe Club Operating Co., 112 Nev. 446, 452, 916 P.2d 786, 790 (1996); Collett Electric v. Dubovik, 112 Nev. 193, 196, 911 P.2d 1192, 1195 (1996).

²See NRS 616C.475(1) (“(E)very employee . . . who is injured by accident arising out of and in the course of employment . . . is entitled to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.”).

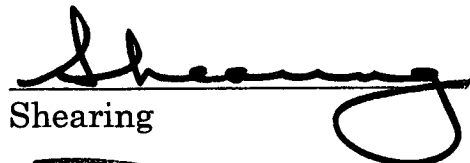
³112 Nev. at 453, 916 P.2d at 790 (discussing “[w]hether it was properly established that Hudson’s termination was justified”).

⁴Id. at 456, 916 P.2d at 792.


If Vencor terminated Gajewski for cause, unless the record establishes that Gajewski's injury caused her inability to secure subsequent, comparable work, Vencor is not responsible for her TTD benefits.

Because the appeals officer failed to make the required determination, we reverse the district court's order and remand with instructions for the district court to (1) grant the petition for judicial review and (2) remand the matter to the administrative agency for a determination as to whether Vencor terminated Gajewski for cause.

It is so ORDERED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Michael A. Cherry, District Judge
J. Michael McGroarty, Chtd.
Michael Paul Wood
Clark County Clerk