

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY
OF NEVADA, A MUTUAL COMPANY,
Appellant,
vs.
EUGENE SMITH,
Respondent.

No. 37535

FILED

MAR 17 2003

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*

This is an appeal from a district court order denying a petition for judicial review and upholding an appeals officer's decision. The appeals officer ruled that Employers Insurance Company of Nevada (EICON) was obligated to provide respondent Eugene Smith a permanent partial disability evaluation.

After realizing that his hearing loss was related to his employment, Smith filed a workers' compensation claim. EICON initially denied Smith's workers' compensation claim.¹ However, after a hearing and an appeal, an appeals officer required that EICON accept Smith's workers' compensation claim. Thereafter, EICON accepted Smith's claim and began processing it. On April 19, 1999, EICON sent Smith a letter denying him a permanent partial disability evaluation. EICON reasoned that Smith's disability did not incapacitate him from earning full wages for at least five cumulative days within a twenty-day period as required by NRS 617.420. EICON informed Smith that if he disagreed with its denial,

¹State Industrial Insurance Company, EICON's predecessor in this matter, was actually the entity responsible for initially denying Smith's claim.

he had seventy days to appeal. Smith appealed EICON's denial on July 19, 1999, ninety-one days after EICON sent him the denial letter.

The hearing officer reversed EICON's denial. EICON subsequently requested a hearing before an appeals officer. The appeals officer affirmed the decision of the hearing officer. Thereafter, EICON filed a petition for judicial review before the district court. The district court denied the petition and affirmed the decision of the appeals officer.

NRS 616C.315(2) requires a claimant aggrieved by an insurer's determination to appeal the determination within seventy days from the date on which the insurer sends the denial. This court has held that if an aggrieved claimant fails to timely request a hearing, the hearing officer and the appeals officer do not have jurisdiction to hear the claim.²

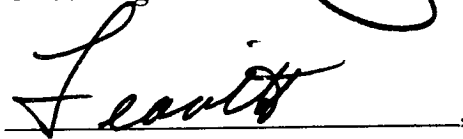
In this case, EICON sent Smith a letter denying a permanent partial disability evaluation on April 19, 1999. Smith did not appeal EICON's denial until July 19, 1999, ninety-one days after EICON sent him the denial letter. Smith failed to appeal EICON's denial within seventy days from the EICON denial of his claim. Therefore, the hearing officer and the appeals officer did not have jurisdiction to hear Smith's appeal. Consequently, the district court should have granted judicial review and reversed the decisions of the hearing officer and appeals officer.

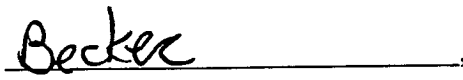
Smith's other argument, that res judicata barred EICON from denying him a permanent partial disability evaluation, is without merit. Accordingly, we

²Reno Sparks Visitors Auth. v. Jackson, 112 Nev. 62, 66-67, 910 P.2d 267, 269 (1996); see also SIIS v. Partlow-Hursh, 101 Nev. 122, 125, 696 P.2d 462, 464 (1985).

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Beckett & Yott, Ltd./Las Vegas
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk