IN THE SUPREME COURT OF THE STATE OF NEVADA

JOANNE FICEK,
Appellant,
vs.
SOUTHWEST GAS CORPORATION,
Respondent.

No. 37588

FILED

MAR 29 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a district court's order affirming an appeals officer's conclusion that there was no objective change in appellant's medical condition that would require her claim for workers' compensation to be reopened.

Appellant Joanne Ficek argues that the appeals officer effectively adopted a rule of issue preclusion based on Ficek's failure to appeal the closure of her claim when the appeals officer concluded that there was no subject matter jurisdiction to consider the claim closure. Further, Ficek claims that the appeals officer's reliance on Reno Sparks Visitor's Authority v. Jackson[1] (herinafter "RSVA") was misplaced. We disagree.

NRS 616C.315(2) provides, in part, that a claimant may appeal from a written determination of an insurer by filing a request for a hearing, and this request must be filed within seventy days after the insurer mails notice of its decision. Here, Ficek was notified in writing that respondent Southwest Gas Corporation intended to close her claim on July 14, 1999. In that letter, Ficek was cautioned that if she intended to appeal the decision to close her claim, she had to file such an appeal

[1]112 Nev. 62, 910 P.2d 267 (1996).

within seventy days of the date on which the notice was mailed. Ficek did not appeal within the allotted time.

In RSVA, this court addressed the question whether a hearing officer or an appeals officer has subject matter jurisdiction to hear a case when a claimant failed to timely appeal a denial of his claim. In that case, we concluded that "[p]ursuant to NRS 616.5412, a hearing officer has jurisdiction over an issue only if a claimant files a timely request for a hearing."[2] Here, Ficek does not dispute that she failed to submit a timely request for a hearing regarding the closure of her claim. Therefore, pursuant to NRS 616C.315(2), the appeals officer properly determined that she did not have subject matter jurisdiction to consider the propriety of the closure of Ficek's claim.

However, the appeals officer did not conclude that there was no subject matter jurisdiction to review respondent's refusal to reopen the claim pursuant to NRS 616C.390(4), which provides that the insurer shall reopen a claim if there has been an objective change in the claimant's medical condition. Accordingly, the district court did not err in affirming the appeals officer's conclusion that she lacked subject matter jurisdiction to consider the propriety of the closure of Ficek's claim.

Ficek next contends that Dr. Bigler's second report, which indicated that Ficek was "apparently" eligible for a permanent impairment rating, constituted an objective change in her medical condition since he first reported no permanent impairment rating eligibility.

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[2]RSVA, 112 Nev. at 66, 910 P.2d at 269. In 1995, NRS 616.5412 was renumbered and is now NRS 616C.315(2).

NRS 616C.390(4) provides that an insurer must reopen a claim when the application to reopen is made within one year of the date on which the claim was closed only if "the application is supported by medical evidence demonstrating an objective change in the medical condition of the claimant" and there is clear and convincing evidence that the original injury is the primary cause of the change. Furthermore, the decision of an appeals officer will not be disturbed by the reviewing court "'unless [it is] clearly erroneous or [it] otherwise amount[s] to an abuse of discretion.'"[3]

This court has previously held that "the relevant time period to determine whether [a claimant's] condition worsened [when considering reopening the claim is] between the closing of his claim . . . and when [the claimant] requested [the insurer] to reopen it."[4] Here, Dr. Bigler initially indicated that Ficek suffered no permanent impairment worthy of a rating. On July 14, 1999, the respondent mailed notice to Ficek indicating its intent to close her claim. However, after receiving a letter from Ficek's attorney urging him to reconsider his position, Dr. Bigler issued a letter on October 18, 1999 stating that Ficek was "apparently . . . eligible for a four percent permanent impairment award." Ficek did not seek to reopen her claim until November 4, 1999. While Dr. Bigler reconsidered Ficek's eligibility, we conclude that his second letter did not constitute an objective change in her actual medical condition between the time of the

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[3]SIIS v. Snapp, 100 Nev. 290, 294, 680 P.2d 590, 593 (1984) (alteration in original) (quoting Nevada Industrial Comm'n v. Reese, 93 Nev. 115, 124, 560 P.2d 1352, 1357 (1977)).

[4]Ruffner v. SIIS, 113 Nev. 881, 884, 944 P.2d 250, 252 (1997).

closure of her claim, July 14, 1999, and her request on November 4, 1999 to reopen the claim.

"[T]he provisions of chapters 616A to 617, inclusive, of NRS must not be interpreted or construed broadly or liberally."[5] NRS 616C.390(4) requires "an objective change in the medical condition of the claimant," not merely a change in opinion of the claimant's physician regarding her permanent impairment rating eligibility for a condition that has not changed since claim closure. Therefore, we conclude that the district court did not abuse its discretion in affirming the appeals officer's determination that there was no objective change in Ficek's medical condition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Stephen L. Huffaker, District Judge
King Gross & Sutcliffe, Ltd.
Jerry Collier Lane
Clark County Clerk

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[5]NRS 616A.010(4).