

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD E. BOORAS,
Appellant,
vs.
DIVISION OF INDUSTRIAL
RELATIONS, INDUSTRIAL
INSURANCE REGULATION SECTION,
AN AGENCY OF THE STATE OF
NEVADA,
Respondent.

No. 37603

FILED
SEP 25 2002

SEP 25 2002

DEPUTY CLERK OF SUPREME COURT
BY *R. Richard*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard E. Booras appeals the district court's decision affirming a benefit penalty determination made by the Division of Industrial Relations ("Division"). We conclude that Booras' arguments are without merit. We affirm.

First, Booras asserts that the district court erred because he has satisfied the requirements for receiving a benefit penalty under NRS 616D.120(1)(d).¹ Once a violation is established under NRS 616D.120(1), NRS 616D.120(3), in pertinent part, provides:

¹NRS 616D.120(1)(d) states:

1. Except as otherwise provided in this section, if the administrator determines that an insurer, organization for managed care, health care provider, third-party administrator or employer has:

....

(d) Made it necessary for a claimant to initiate proceedings pursuant to chapters 616A to 616D inclusive, or chapter 617 of NRS for compensation found to be due him by a hearing officer, appeals officer, court of competent

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3. If the administrator determines that a violation of any of the provisions of paragraphs (a) to (d), inclusive, of subsection 1 has occurred, the administrator shall order the insurer, organization for managed care, health care provider, third-party administrator or employer to pay to the claimant a benefit penalty in an amount that is not less than \$5,000 and not greater than \$25,000. . . .

According to Booras, he is entitled to a benefit penalty under NRS 616D.120(1)(d) because he was forced to initiate proceedings to collect the \$400.00 that a third-party administrator erroneously deducted from his benefit checks.

Neither this court nor the district court may substitute its judgment for that of the agency in regard to questions of fact.² Accordingly, an agency's decision will not be overturned unless it is clearly erroneous or an arbitrary abuse of discretion.³ An agency's decision will be affirmed so long as there is substantial evidence to support it.⁴ Nonetheless, questions of law are subject to de novo review.⁵

We conclude that Booras is not entitled to a benefit penalty under NRS 616D.120(1)(d). Although Booras did initiate proceedings after

. . . continued

jurisdiction, written settlement agreement, written stipulation or the division when carrying out its duties pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS.

²Bullock v. Pinnacle Risk Mgmt., 113 Nev. 1385, 1388, 951 P.2d 1036, 1038 (1997).

³Id.

⁴Id.

⁵Id.

being informed of the third-party administrator's decision to reduce his benefits, Booras did not initiate proceedings in order to enforce the prior findings of a hearing officer, appeals officer or a court of competent jurisdiction as required by the plain language of NRS 616D.120(1)(d).

Second, Booras asserts that the district court erred when it determined that he was not entitled to a benefit penalty under NRS 616C.225(2).⁶ According to Booras, he should not be required to obtain a

⁶NRS 616C.225 (1) and (2) state:

1. Except as otherwise provided in this section, if an insurer determines that an employee has knowingly misrepresented or concealed a material fact to obtain any benefit or payment under the provisions of chapters 616A to 616D, inclusive, of NRS, the insurer may deduct from any benefits or payments due to the employee, the amount obtained by the employee because of the misrepresentation or concealment of a material fact. The employee shall reimburse the insurer for all benefits or payments received because of the willful misrepresentation or concealment of a material fact.

2. An employee who is aggrieved by a determination of an insurer made pursuant to subsection 1 may appeal that determination pursuant to NRS 616C.315 to 616C.385, inclusive. If the final decision by an appeals officer is favorable to the employee, the administrator shall order the insurer to pay \$2,000 to that employee, in addition to any benefits or payments the employee is entitled to receive, if the administrator determines that the insurer had no reasonable basis for believing that the employee knowingly misrepresented or concealed a material fact to obtain any benefit or payment.

favorable decision from an appeals officer before being eligible for a benefit penalty under NRS 616C.225(2).

We conclude that Booras is not entitled to a benefit penalty under NRS 616C.225(2). “[W]hen the language of a statute is plain, its intention must be deduced from such language, and the court has no right to go beyond it.”⁷ Here, the plain language of NRS 616C.225(2) requires that a claimant obtain a favorable decision from an appeals officer before he is eligible for a benefit penalty. Moreover, the legislature expressly chose to retain the requirement of a “final decision by an appeals officer . . . favorable to the employee” when NRS 616C.225(2) (formerly NRS 616.563) was amended in 1995.⁸ Since Booras never obtained a favorable final decision from an appeals officer, he was not entitled to a benefit penalty pursuant to NRS 616C.225(2).

Third, Booras asserts that the benefit penalty provisions contained within NRS Chapter 616D are unconstitutional because they violate his right to procedural due process and equal protection.

We conclude that the benefit penalty framework under NRS Chapter 616D is not unconstitutional. Although a procedural due process analysis is appropriate because Booras has a property interest in the potential benefit penalty,⁹ due process is a flexible concept that only calls

⁷Cirac v. Lander County, 95 Nev. 723, 729, 602 P.2d 1012, 1015 (1979) (quoting Hess v. The County Commissioners of Washoe County, 6 Nev. 104, 107 (1870)).

⁸1995 Nev. Stat., ch. 544, § 6, at 1873.

⁹See Goldberg v. Kelly, 397 U.S. 254, 261-63 (1970) (holding that the termination of a statutory entitlement furnished the basis for a procedural due process analysis).

for such procedural protections as each individual situation demands.¹⁰ Accordingly, when determining whether the requirements of due process have been satisfied in a particular case, a court must balance:

(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of that private interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.¹¹

Here, the private interest at stake is not significant because the benefit penalties are primarily designed to deter bad faith conduct by insurers, not to compensate claimants. Booras' livelihood does not depend upon his receipt of a benefit penalty. His private interest is not as great as it would be if his livelihood were hanging in the balance.¹² Additionally, the risk of erroneous deprivation and the value of additional procedures would be marginal because the Division's procedures, which included interviewing Booras and accepting written submissions, were well fitted to the nature of the determination being made. Finally, the State has a substantial interest in keeping the administrative procedures

¹⁰Molnar v. State, Bd. of Med. Examiners, 105 Nev. 213, 216, 773 P.2d 726, 727 (1989).

¹¹State, Dep't Mtr. Veh. v. Root, 113 Nev. 942, 946, 944 P.2d 784, 786 (1997) (quoting State, Dep't Mtr. Vehicles v. Vezeris, 102 Nev. 232, 236-37, 720 P.2d 1208, 1211-12 (1986)).


¹²See Minton v. Board of Medical Examiners, 110 Nev. 1060, 1082, 881 P.2d 1339, 1354-55 (1994) (holding that the right to continue holding a medical license implicated a significant private interest because it affected the livelihood of the license holder).

surrounding workers' compensation claims as expeditious and informal as practicable.¹³ After balancing the above factors, we conclude that the benefit penalty provisions contained within NRS Chapter 616D are not unconstitutional.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Young

 J.

Agosti

 J.

Leavitt

cc: Eighth Judicial District Court Department 12, District Judge
James P. Kemp
Robert A. Kirkman
John F. Wiles
Clark County Clerk

¹³See NRS 616C.315(4) (providing that a "hearing before the hearing officer must be conducted as expeditiously and informally as is practicable").

¹⁴To the extent that Booras bases his constitutional challenge upon his right to equal protection, his challenge fails because equal protection concerns only arise when legislative classifications distinguish between those who are similarly situated. See Boyne v. State ex rel. Dickerson, 80 Nev. 160, 164, 390 P.2d 225, 227 (1964). Here, Booras, a claimant, is not similarly situated with the third-party administrator.