IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY, DIVISION OF INDUSTRIAL RELATIONS, Appellant, vs. GRISWOLD REAL ESTATE MANAGEMENT, Respondent.	No. 39344 FILED JUN 03 2004 JANETTE M. BLOOM CLERK OF SUPREME COURT DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order that granted respondent's petition for judicial review and remanded a workers' compensation claim to the appeals officer for a full hearing on the merits. A third-party claimant filed a workers' compensation claim with appellant State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR) for a wrist injury allegedly incurred during the course of his employment. In his claim, the claimant named respondent Griswold Real Estate Management as his employer. Apparently, M.E.T. Properties, with which Griswold had contracted for the leasing and management of the property at which the claimant's injury occurred, was later also submitted as the claimant's employer. The claimant requested benefits from the Uninsured Employers' Claim Fund/Account (the Fund). In a letter dated May 17, 2000, the DIR notified Griswold, as well as M.E.T. Properties, that it had determined that both entities were the claimant's employers, that neither entity was carrying industrial insurance at the time of the claimant's injury, that it was assigning the claimant's claim to the Fund for a compensability determination, and that

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both entities would be jointly responsible for any benefits paid to or on behalf of the claimant. The letter also informed Griswold and M.E.T. Properties of their rights to administratively appeal the DIR's determination by requesting a hearing within sixty days of the letter's date.

Both Griswold and M.E.T. Properties filed requests for hearings. Griswold's request, which challenged the DIR determination that it was the claimant's employer at the time of injury, was received and filed by the Hearings Division on July 24, 2000. All parties subsequently stipulated to submit the matter directly to an appeals officer. At a May 2, 2001 hearing, the appeals officer found that Griswold's untimely request for a hearing was eight days late under NRS 616C.220(9) (1999), which allowed sixty days for an appeal.[1] The appeals officer dismissed Griswold's administrative appeal for lack of jurisdiction.

Griswold then filed a petition for judicial review in the district court, claiming that it was not an employer subject to the Nevada Industrial Insurance Act (NIIA)[2] and that it was therefore not subject to the sixty-day jurisdictional time limit for filing an appeal. Griswold argued that the appeals officer's decision must be reversed because it violated the NIIA's provisions, was made in excess of authority, and was erroneous as a matter of law. Griswold further asserted that because it

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[1]The appeals officer's computation does not appear to have taken account of the three additional days allowed for mailing. Nyberg v. Nev. Indus. Comm'n, 100 Nev. 322, 683 P.2d 3 (1984). Nonetheless, the sixty-three days expired on July 19, 2000, six days before the request for a hearing was filed.

[2]NRS 616A-616D; see NRS 616A.005.

was not an employer subject to the NIIA, the DIR's determination that an employer/employee relationship existed was void. Because a void determination can be appealed at any time, Griswold maintained, the appeals officer had jurisdiction to consider its request on the merits. The district court concluded that the appeals officer had jurisdiction to consider Griswold's administrative appeal on its merits and granted Griswold's petition for judicial review. The DIR now appeals to this court.

An administrative decision is reviewed to determine whether the agencv's decision was arbitrary, capricious, or an abuse of discretion, whether it was based upon an error of law, or whether it was made in excess of authority or upon unlawful procedure.[3] This court independently reviews an agency's legal determinations. However, "the agency's conclusions of law . . . are entitled to deference, and will not be disturbed if they are supported by substantial evidence."[4]

The DIR is assigned with the overall administration of workers' compensation matters.[5] The DIR is, accordingly, authorized to assign a claim to the Fund/Account for administration and payment,[6] and to determine whether the employer of an injured employee was insured.[7] If the employer is found to have been uninsured, the DIR may recover

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[3]NRS 233B.135(3); State, Dep't Mtr. Veh. v. Jones-West Ford, 114 Nev. 766, 962 P.2d 624 (1998).

[4]Ayala v. Caesars Palace, 119 Nev. __, __, 71 P.3d 490, 491 (2003) (quotations and citations omitted).

[5]NRS 232.620; NRS 616A.400.

[6]NRS 616C.220(7).

[7]Id.

"from the employer," any payments made pursuant to the injured employee's accepted claim.[8] In proceedings to determine whether the employer must reimburse the Fund/Account, the employer bears the burden of demonstrating that he either provided mandatory insurance or was not obliged to provide the employee with industrial insurance.[9] Once the DIR makes its determination, any aggrieved party "may appeal that determination within 60 days after the determination is rendered."[10] The time allowed by statute to appeal to hearings officers and appeals officers is jurisdictional and mandatory.[11] Thus, an appeals officer must dismiss an untimely appeal for lack of jurisdiction.[12]

A notice of administrative appeal is considered timely when it is received and filed by the hearings division within the statutory time frame.[13] The date on which Griswold's request for a hearing was received and filed is not disputed. Nor does Griswold suggest that it filed a timely

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[8]NRS 616C.220(6), (7).

[9]NRS 616C.220(4).

[10]NRS 616C.220(9) (1999). Although the 1999 version does not state that an appeal must be "filed" within sixty days, it does refer to "the manner provided by . . . [NRS] 616C.315 to 616C.385," which mandates filing.

[11]Reno Sparks Visitors Auth. v. Jackson, 112 Nev. 62, 910 P.2d 267 (1996); SIIS v. Partlow-Hursh, 101 Nev. 122, 696 P.2d 462 (1985).

[12]An untimely filing may excused if the "person aggrieved" shows that he did not receive notice of the determination and the necessary forms. NRS 616C.315(4); NRS 616C.345(8); Jackson, 112 Nev. at 66, 910 P.2d at 270. Griswold does not contend that it did not receive the necessary notice and forms or that its untimely filing should be excused.

[13]Partlow-Hursh, 101 Nev. at 124, 696 P.2d at 463.

request under NRS 616C.220(9) (1999). Instead, Griswold asserts that the sixty-day requirement should not apply to bar its appeal because it is exempt from all NIIA provisions pursuant to NRS 616B.606.[14] NRS 616B.606 states that certain real estate brokers are not "statutory employers for the purpose of" the NIIA.[15] Because the NIIA's purpose is to insure an efficient workers' compensation system at "a reasonable cost to the employers who are subject to the provisions of those chapters,"[16] and because the NIIA's terms, conditions and provisions "shall be conclusive, compulsory and obligatory upon both employers and employees coming within the provisions of those chapters,"[17] Griswold argues that the NIIA applies exclusively to employees and employers, as defined by the NIIA. Therefore, Griswold contends, as it is excluded from the term "employer," it is not subject to any provision of the NIIA, including the sixty-day appeal deadline. And even though the NIIA's sixty-day appeal requirement applies to any aggrieved party, Griswold asserts that if "non-

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[14]NRS 616B.606:

> **Real estate brokers and salesmen not employers under certain circumstances**
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> Any person licensed pursuant to the provisions of chapter 645 of NRS who engages an independent contractor to maintain or repair property on behalf of an individual property owner or an association of property owners is not a statutory employer for the purposes of chapters 616A to 616D, inclusive, of NRS.

[15]Id.

[16]NRS 616A.010(1).

[17]NRS 616A.020(2).

employers" are considered "aggrieved parties," the NIIA distinctions between those employers that are subject to the NIIA's insurance requirements and those that are not would be rendered a nullity.

Griswold further asserts that, because it is not subject to the NIIA provisions, the DIR's determination applying a NIIA provision to it is void for lack of jurisdiction. Essentially, Griswold argues that the district court correctly determined that the appeals officer has jurisdiction to hear the merits of its argument that it is not a NIIA employer, despite the admittedly late filing of its appeal, because it is not a NIIA employer.

The DIR has the power and authority to make determinations regarding workers' compensation claims, and may preliminarily determine whether an entity should be viewed as an employer under the act.[18] Therefore, although the DIR's determination may be incorrect, it is not void for lack of jurisdiction and the only way to challenge it is to administratively appeal within sixty days.[19] In this case, if Griswold believed that the DIR's determination was made in error, it had available

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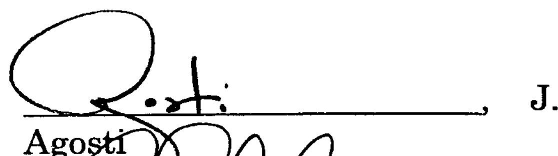
[18]See Merez v. Squire Court Ltd. Partnership, 114 S.W.3d 184 (Ark. 2003) (concluding that the Arkansas Workers' Compensation Commission, not the trial court, holds exclusive original jurisdiction to determine whether respondent was an employer under the state worker's compensation act); see also Hays Home Delivery, Inc. v. EICON, 117 Nev. 678, 31 P.3d 367 (2001) (determining whether respondent was a statutory employee under the NIIA after an EICON determination was appealed to the hearing officer, appeals officer, and district court).

[19]See, e.g., Garverick v. Hoffman, 262 N.E.2d 695, 699 (Ohio 1970) ("[E]very wrong decision, even by an administrative body, is not void as being beyond the so-called jurisdiction of the tribunal, even though voidable by proper judicial process.").

an administrative appeal of the determination.[20] Its failure to timely file a hearing request divested the hearings division, and correspondingly the appeals officer, of jurisdiction to hear the merits of its administrative appeal. The time limits in which to file an administrative appeal are jurisdictional and mandatory; thus, the appeals officer cannot now be granted jurisdiction to hear the merits of the appeal. Therefore, the district court erred when it granted the petition for judicial review and remanded the matter to the appeals officer for a full hearing on the merits. Accordingly, we

ORDER the judgment of the district court REVERSED.

_____________________, J.
Becker


_____________________, J.
Agosti

_____________________, J.
Gibbons

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[20]See Diaz v. Golden Nugget, 103 Nev. 152, 155, 734 P.2d 720, 723 (1987) ("Once the jurisdiction of the appeals officer is invoked, the appeals officer 'must hear any matter raised before him on its merits, including new evidence bearing on the matter.' [NRS 616C.360(2).] Thus, the hearing before the appeals officer is more akin to a hearing de novo than to an appeal as we know it." (emphasis added)).

cc: Hon. Ronald D. Parraguirre, District Judge
John F. Wiles
Nancy E. Wong
Marquis & Aurbach
Clark County Clerk