

IN THE SUPREME COURT OF THE STATE OF NEVADA

KAREN LEBARON,
Appellant,
vs.
PALACE STATION/STATION
CASINOS,
Respondent.

No. 39459

FILED

AUG 19 2003

CLERK OF SUPREME COURT
STATE OF NEVADA
DEPT. OF JUSTICE

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. Appellant LeBaron suffered an industrial injury while working for respondent Palace Station Hotel and Casino. The attorney general's office investigated LeBaron for fraud in connection with her industrial claim. In 1993, LeBaron, represented by counsel, entered into a stipulated settlement with Palace Station. LeBaron received \$10,000 as full and final compensation for her claim, and in addition, the fraud investigation against her was dropped. Provision one of the settlement specifically provided that LeBaron was to receive the \$10,000 "as compensation for any permanent partial disability award which she is now, or may be, entitled to in the future as a result of this industrial claim." In exchange, LeBaron relinquished all of her rights concerning her claim, except the right to reopen the claim for medical investigation purposes pursuant to former NRS 616.545.

In 1999, LeBaron's claim was reopened. In 2000, LeBaron was declared medically stable and her claim was closed. Palace Station scheduled LeBaron for a permanent partial disability evaluation. However, Palace Station subsequently cancelled the evaluation and notified LeBaron that she was not entitled to the evaluation because of the 1993 settlement. LeBaron appealed Palace Station's determination. A hearing officer and an appeals officer affirmed Palace Station's

determination, and the district court denied judicial review. This appeal ensued.

LeBaron argues that NRS 616B.609¹ precludes a claimant from settling her claim as to future benefits under NRS 616A to NRS 616D because such a settlement constitutes a modification or waiver of liability. Therefore, she maintains that the 1993 settlement is void. In reviewing an appeals officer's decision, this court examines the evidence that was before the appeals officer to determine whether the appeals officer's decision was arbitrary and capricious, and therefore, an abuse of discretion.² However, this court reviews an appeals officer's conclusions of law de novo.³

NRS 616B.609(1)(b) provides that "[a] contract of employment, insurance, relief benefit, indemnity, or any other device, having for its purpose the waiver or modification of the terms or liability created by chapters 616A to 616D, inclusive, of NRS is void." However, other courts with statutes similar to NRS 616B.609 have held that "disputed issues in workers' compensation claims may be the subject of settlement agreements."⁴ Here, the 1993 settlement did not waive or modify

¹NRS 616B.609(1)(b) provides that any device waiving or modifying liability under NRS 616A to NRS 616D is void.

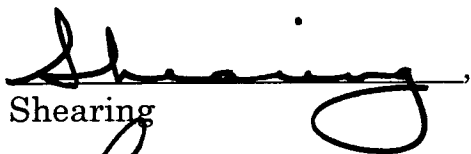
²Horne v. SIIS, 113 Nev. 532, 536-37, 936 P.2d 839, 842 (1997); SIIS v. Montoya, 109 Nev. 1029, 1031, 862 P.2d 1197, 1199 (1993); see also NRS 233B.135(3).

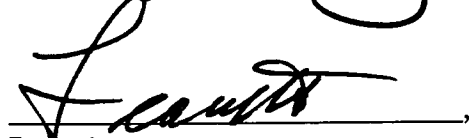
³Roberts v. SIIS, 114 Nev. 364, 367, 956 P.2d 790, 792 (1998).

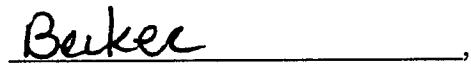
⁴See Safeway Stores v. Industrial Com'n of Ariz., 730 P.2d 219, 226 (Ariz. 1986); see also State v. Industrial Commission, 38 N.E.2d 399, 401 (Ohio 1941) (holding that Ohio's statute prohibiting agreements to waive workers' compensation only applied to agreements made prior to injury or for nominal consideration).

LeBaron's right to workers' compensation; it paid her \$10,000 as compensation for such an award. LeBaron was represented by counsel, admitted that the settlement was fair and reasonable, and stated that she understood its legal consequences. The settlement in this case was not a waiver or modification of benefits within the meaning of NRS 616B.609,⁵ and thus, was a valid agreement. Therefore, the district court did not err by denying judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shering


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Ronald D. Parraguirre, District Judge
Greenman Goldberg Raby & Martinez
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Clark County Clerk

⁵See Safeway Stores, 730 P.2d at 224 (stating “[w]e fail to see how an intelligent decision to settle one’s claim can be termed a waiver of ‘rights to compensation’”) (quoting Ariz. Rev. Stat. 23-1025.A); see also 2 Modern Workers Compensation, § 204:6 (Matthew J. Canavan ed., Clark Boardman Callaghan 1993) (noting that “[a] statute precluding waivers of compensation rights does not preclude settlement of workers’ compensation claims”).