

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSEMARY JORDAN,
Appellant,
vs.
HEALTHSOUTH CORPORATION,
Respondent.

No. 39808

FILED

NOV 09 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order granting a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On March 12, 1999, appellant, Rosemary Jordan, agreed to settle a workers' compensation matter with her employer, respondent Healthsouth Corporation, and accepted a lump sum payment of permanent partial disability ("PPD") compensation. Without having received notice of the parties' settlement, on March 16, 1999, the appeals officer determined that Jordan was entitled to temporary total disability benefits ("TTD"). Healthsouth filed a petition for judicial review in the district court. The district court vacated the appeals officer's decision and remanded the matter, directing the appeals officer to enter an order stating that Jordan had "elected and accepted payment of her Permanent Partial Disability award in a lump sum in March, 1999."

The appeals officer did not follow the district court's order and instead granted Jordan's request that she be permitted to rescind her PPD settlement. The appeals officer reasoned that the parties had operated under a mutual mistake of fact when Jordan accepted the PPD settlement. Healthsouth subsequently brought a petition for writ of mandamus in the district court, asking the district court to compel the appeals officer to

vacate her order and dismiss the appeal because the appeals officer lacked subject matter jurisdiction over Jordan's request for TTD benefits. The district court granted the writ, and the appeals officer entered an order dismissing Jordan's appeal as instructed. This appeal followed.

Jordan now argues that the district court erred in granting Healthsouth's petition for a writ of mandamus because there was a plain, speedy and adequate remedy in this case. Specifically, Jordan contends that the district court should have allowed the appeals officer to consider the PPD settlement and dismiss this case. We disagree.

NRS 34.170 provides that "[t]his writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested." "We review the district court's grant or denial of a writ petition under an abuse of discretion standard."¹

After a review of the record, we conclude that the district court at no point abused its discretion in this case. Jordan had accepted the proceeds of her lump-sum settlement with Healthsouth. The appeals officer was possessed of no discernable authority to entertain Jordan's request that the appeals officer set aside the PPD settlement entered into by Jordan with Healthsouth prior to the appeals officer's decision to grant her a TTD award of benefits. The matter had been remanded to the appeals officer from the district court with specific instructions. After the appeals officer's departure from those instructions, Healthsouth petitioned the district court for issuance of a writ of mandamus, which the district

¹County of Clark v. Doumani, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998).

court granted. We perceive no abuse of discretion by the district court in concluding that a writ of mandamus was appropriate to compel the appeals officer to enter an order vacating its order awarding TTD benefits and dismissing Jordan's appeal.² We further conclude that the district court properly remanded the matter on judicial review to the appeals officer with instructions to the appeals officer to dismiss Jordan's appeal as moot. Therefore, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Nevada Attorney for Injured Workers/Carson City
Nevada Attorney for Injured Workers/Las Vegas
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Clark County Clerk

²We have reviewed all of Jordan's additional arguments and conclude they are without merit.