IN THE SUPREME COURT OF THE STATE OF NEVADA

PUBLIC AGENCY COMPENSATION TRUST (PACT),
Appellant,
vs.
COLIN PERRY AND EMPLOYERS INSURANCE COMPANY OF NEVADA,
Respondents.

No. 40241

FILED

OCT 18 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Respondent Colin Perry was an Elko County deputy sheriff, who experienced chest pain in 1992 and 1998 and underwent at least one angioplasty after each episode. Respondent Employers Insurance Company of Nevada (EICON) accepted Perry's claim for coronary artery disease in 1992, but declined to reopen the 1992 claim in 1998. EICON asserted that this was a new injury or aggravation of the 1992 condition. Appellant Public Agency Compensation Trust (PACT), Elko County's workers' compensation provider in 1998, declined Perry's 1998 claim, determining that EICON should be responsible because the 1998 incident was merely a reoccurrence of his 1992 condition.

An appeals officer held PACT responsible for the 1998 injury, determining that it was a new event involving a different artery than in 1992. PACT now appeals from a district court order denying its petition for judicial review.

Under the last injurious exposure rule, the insurer at the time of a new injury or an aggravation of a prior injury is liable for all the claimant's benefits;[1] for recurrences, however, the insurer at the time of the prior injury remains liable.[2]

An appeals officer's characterization of an injury is a fact-based conclusion of law entitled to deference[3] and will not be overturned if supported by substantial evidence.[4] Here, the appeals officer determined that the 1998 episode constituted a new event and, despite the conflicting evidence presented, substantial evidence supports such a determination. The 1998 injury occurred in the left anterior descending coronary artery as opposed to the right coronary artery, the site of Perry's 1992 stenosis. 1992 medical exams revealed that the left side of Perry's heart was operating normally at the time. Accordingly, we conclude that, under the last injurious exposure rule, the appeals officer did not err in determining that PACT was liable as the insurer at the time of the new injury.[5]

PACT also argues that NRS 617.457 violates the due process clause. Every legislative enactment enjoys the presumption of constitutional validity, and appellants bear a heavy burden in overcoming

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[1]SIIS v. Swinney, 103 Nev. 17, 19-20, 731 P.2d 359, 361 (1987).

[2]Id. at 20, 731 P.2d at 361.

[3]Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. ___, ___, 112 P.3d 1093, 1098 (2005) (citing Swinney, 103 Nev. at 20, 731 P.2d at 361)

[4]Id. at ___, 112 P.3d at 1097.

[5]We have considered PACT's arguments that the appeals officer erred in rejecting its offer of proof that the 1998 injury was a recurrence, and improperly applied NRS 617.487, and conclude that they lack merit.

it.[6] When considering the validity of legislation under due process attack, "the state enjoys a wide range of discretion to make reasonable classifications for enacting laws over matters within its jurisdiction."[7] "'A statutory discrimination will not be set aside if any state of facts may be conceived to justify it.'"[8] The legislation could rationally conclude that firefighters and police officers run a higher risk of heart disease, thus serving as a reasonable basis for the legislation. We therefore conclude that NRS 617.457 does not violate the due process clause.

PACT also contends that NRS 617.457 violates the equal protection clause. When a classification does not involve a suspect class or fundamental right, or a quasi-suspect class such as gender, the rational basis test applies,[9] as it does here. Under the rational basis test, legislation meets the burden of review when it is rationally related to a

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[6]Allen v. State, Pub. Emp. Ret. Bd., 100 Nev. 130, 133, 676 P.2d 792, 794 (1984).

[7]Id. at 134, 676 P.2d at 794.

[8]Id. at 135, 676 P.2d at 795 (quoting Koontz v. State, 90 Nev. 419, 421, 529 P.2d 211, 212 (1974)) (emphasis added in Allen); see also Boylan v. United States, 310 F.2d 493, 500 (1962) ("Where the legislative judgment as to reasonableness is drawn into question, the judicial inquiry is restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it.").

[9]Allen, 100 Nev. at 135-36, 676 P.2d at 795-96.

legitimate government purpose.[10] "If any state of facts may reasonably be conceived to justify it, a statutory discrimination will not be set aside."[11]

Here, legislative history suggests that police officers and firefighters are at an increased risk of developing heart disease because of chronic stress on the job. As a result, the Legislature could have enacted NRS 617.457 for the purpose of encouraging firefighters and police officers to remain in public service or to eliminate costly "battles-of-the-experts" used to prove or disprove a causal connection between firefighting and police work and heart disease. Thus, we conclude that NRS 617.457 is reasonably related to achieving a legitimate government purpose, and that PACT has failed to overcome the statute's presumption of constitutional validity.

Finally, PACT argues that NRS 617.457 is special legislation regulating county business, which violates Article 4, Section 20, of the Nevada Constitution.[12] "[A] special law . . . is one which affects only individuals and not a class—one which imposes special burdens, or confers peculiar privileges upon one or more persons in no wise distinguished from

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[10]Id. at 136, 676 P.2d at 795-96; Tarango v. SIIS, 117 Nev. 444, 454-55, 25 P.3d 175, 182 (2001).

[11]State v. District Court, 101 Nev. 658, 662, 708 P.2d 1022, 1025 (1985); see also Boulder City v. Cinnamon Hills Assocs., 110 Nev. 238, 249, 871 P.2d 320, 327 (1994) ("It is well-settled under rational basis scrutiny that the reviewing court may hypothesize the legislative purpose behind legislative action.").

[12]Article 4, Section 20 of the Nevada Constitution states: "The legislature shall not pass local or special laws . . . [r]egulating county and township business . . . ."

others of the same category."[13] Laws regulating county business must be general and operate uniformly throughout the state.[14] NRS 617.457 is not a special law because it affects fulltime firefighters and police officers with at least five years of experience as a class, not individually, and it is a law of general application because it applies to such firefighters and police officers throughout the state. It does not limit its application to any one particular locality. Thus, we conclude that PACT's final argument lacks merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.
Becker

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

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[13]State of Nevada v. Cal. M. Co., 15 Nev. 234, 249 (1880) (finding that a law which categorizes delinquent taxpayers whose delinquency exceeds $300.00 is general and not unconstitutional).

[14]Nev. Const. art. 4, § 21.

cc: Hon. Jerome Polaha, District Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Anderson & Gruenewald
Beckett & Yott, Ltd./Carson City
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