

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,
Appellant
vs.
JOSE LUIS VELAZQUEZ,
Respondent.

No. 40479

FILED

JUN 16 2005

ORDER OF REVERSAL

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

This is an appeal from a district court order granting a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Proper person respondent Jose Luis Velazquez timely notified his employer, appellant Clark County School District, of an injury he incurred in a March 9, 2001 work-related accident. Under NRS 616C.020(1), Velazquez was then required to file a claim for compensation with his employer's insurer within ninety days after the accident, that is, by June 7, 2001.¹ Unfortunately, Velazquez's claim for compensation was not filed by June 7, and his claim was consequently denied.

Velazquez administratively appealed, primarily asserting that his untimely filing should be excused based on mistake or ignorance, because he believed that the form should have been filed by the physician who examined him on May 31, 2001. Ultimately, the appeals officer upheld the denial of his claim, expressly finding that no legally valid

¹See Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 2 P.3d 850 (2000).

excuse existed to excuse Velazquez's untimely filing.² Upon petition for judicial review to the district court, however, the court apparently determined that Velazquez was entitled to be excused from the filing requirements because he had mistakenly calculated the ninety-day period from the date of notice, rather than the date of the accident, and because his employer had not demonstrated prejudice.


In considering petitions for judicial review from administrative workers' compensation decisions, the district court, like this court, must determine whether the appeals officer's decision is based on substantial evidence and may not disturb factual determinations regarding the weight of the evidence or credibility.³ Here, the appeals officer's factual determination that Velazquez had not demonstrated circumstances that would excuse him from the filing deadline was based on substantial evidence. For instance, his employer submitted evidence demonstrating that Velazquez had previous experience with workers' compensation claim procedure and had also received employer documents detailing such procedure. Further, during the hearing before the appeals officer, Velazquez conceded that he had been reminded of the ninety-day filing deadline. Moreover, the record contains no evidence suggesting that Velazquez misinterpreted the ninety-day requirement as commencing from the end of the notice period or from the time that he submitted the


²See NRS 616C.025(2) (providing that an untimely claim may be excused when the claimant was prevented from timely filing a claim by circumstances beyond his control, mistake or ignorance of the law, mental or physical inability, or fraud, misrepresentation or deceit).

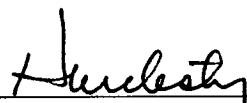
³Barrick Goldstrike Mine, 116 Nev. at 547, 2 P.3d at 853-54; NRS 233B.135.

notice of injury. Accordingly, as the appeals officer's decision was based on substantial evidence and the district court impermissibly substituted its judgment for that of the appeals officer, the district court's order granting respondent's petition for judicial review is reversed.

It is so ORDERED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Valorie Vega, District Judge
L. Steven Demaree
Jose Luis Velazquez
Clark County Clerk