

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY
OF NEVADA, A MUTUAL COMPANY,
Appellant,

vs.

THOMAS CHURCHILL; AND
DIVISION OF INDUSTRIAL
RELATIONS, AN AGENCY OF THE
STATE OF NEVADA,
Respondents.

No. 40480

FILED

SEP 03 2004

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

DIVISION OF INDUSTRIAL
RELATIONS, AN AGENCY OF THE
STATE OF NEVADA,
Appellant,

vs.

THOMAS CHURCHILL; AND
EMPLOYERS INSURANCE COMPANY
OF NEVADA, A MUTUAL COMPANY,
Respondents.

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a petition for judicial review and reversing a benefit penalty determination made by the Division of Industrial Relations. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

The Division of Industrial Relations ("DIR") held that the administrator of the uninsured employers' claim fund, Employers Insurance Company of Nevada ("EICON"), had not violated NRS 616D.120(1)(c)(2), and, therefore, the injured employee was not entitled to a benefit penalty. The district court granted judicial review, reversed DIR's determination and remanded the matter to DIR to determine the amount of benefit penalty due to the injured employee, respondent Thomas Churchill.

Nevada Administrative Procedure Act

EICON argues that the district court's order of remand violates NRS Chapter 233B, the Nevada Administrative Procedure Act, which requires that each party in a contested case have an opportunity to respond and present evidence.¹ EICON asserts that, because Churchill petitioned for judicial review with the district court,² EICON did not have the opportunity to respond to argument or present evidence. We disagree.

Prior to Churchill's petition for judicial review and as part of its investigation, DIR notified EICON that Churchill had filed a complaint seeking a benefit penalty and, at the same time, had requested a response and supporting documentation from EICON.³ According to EICON, within one month of Churchill petitioning for judicial review, EICON filed a notice of intent to participate in the proceeding. After Churchill filed his opening brief, both DIR and EICON filed an answering brief. EICON's answering brief comprehensively addressed its benefit penalty argument. Although a transcript of the hearing was not provided in the record, the district court's order of remand notes that EICON's attorney made an appearance at the hearing. The record also reveals that DIR provided a copy of its record and investigation of Churchill's complaint to the district court, which would have also included an investigation of EICON's activities concerning Churchill. Therefore, it appears that EICON had an adequate opportunity to present evidence and respond to argument during

¹See NRS 233B.032; NRS 233B.121(4).

²See NRS 616D.150

³See NRS 616D.130 (requiring the administrator to timely investigate a complaint alleging violations of NRS 616D.120).

the district court proceedings. Accordingly, we conclude that EICON's argument is without merit.

Substantial evidence

DIR and EICON argue that substantial evidence supports DIR's determination that Churchill was not entitled to a benefit penalty, and therefore, the district court erred when it remanded the matter for a determination of the amount of benefit penalty due.

NRS 233B.135 sets forth the standard of review of an administrative decision. "This court's role in reviewing an administrative decision is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion."⁴ In its review, this court may not go beyond the record nor substitute its judgment for that of the agency in regard to questions of fact.⁵ Instead, this court must determine whether the agency's decision is supported by substantial evidence.⁶ "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion."⁷

NRS 616D.120 forms the basis for DIR's ability to sanction entities for noncompliance with Nevada's workers' compensation law. NRS 616D.120(1)(c)(2) provides that DIR may impose a fine where it determines that the fund administrator "[r]efused to pay or unreasonably delayed payment to a claimant of compensation or other relief found to be

⁴United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993).

⁵Id. at 423-24, 851 P.2d at 424.

⁶Id. at 424, 851 P.2d at 424.

⁷Id. at 424, 851 P.2d at 424-25.

due him by a[n] . . . appeals officer . . . if the refusal or delay occurs . . . [l]ater than 30 days after the” appeals officer’s decision. Where DIR finds that the fund administrator has violated NRS 616D.120(1)(c)(2), NRS 616D.120(3) directs DIR to impose a benefit penalty. Here, DIR determined that no benefit penalty was due. The district court disagreed.

On July 9, 1999, the appeals officer ordered the fund administrator to accept the claim for “all appropriate benefits.” A copy of this decision was mailed to both EICON and DIR. Churchill did not receive payment for his claims until November 1999. Likewise, although DIR took over Churchill’s claim on January 1, 2000, DIR did not pay benefits to Churchill until March 2000. Accordingly, Churchill’s benefits were paid later than thirty days after the appeals officer’s decision.

EICON and DIR contend that, because there was no finding that specific compensation was due, the parties did not violate NRS 616D.120(1)(c)(2). Although the appeals officer did not specifically delineate the exact benefits due to Churchill, the fund administrators were on notice of Churchill’s benefits by virtue of the fact that the appeals officer found that Churchill was entitled to benefits from the uninsured employers’ claim fund and from documentation already submitted by Churchill. In April 1998, Churchill submitted a claim for compensation in which he stated that he was out of work from the date of the accident, October 14, 1996, to November 22, 1996. Therefore, the fund administrators were aware of Churchill’s entitlement to temporary total disability benefits for this time. Moreover, in an April 1998 investigation report, DIR noted that it had received information relating to Churchill’s medical bills. While EICON and DIR may not have received the appropriate documentation from Churchill, both administrators were on notice of the benefits due to Churchill and should have taken measures to

timely inform Churchill of the need for appropriate documentation. Therefore, we conclude that the district court properly determined that substantial evidence did not support DIR's determination that Churchill was not entitled to a benefit penalty. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Allan R. Earl, District Judge
Donald C. Smith
Nevada Attorney for Injured Workers/Carson City
John F. Wiles
Clark County Clerk