

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNIE WIGGINS,
Appellant,
vs.
PERINI BUILDING COMPANY,
Respondent.

No. 40878

FILED

SEP 03 2004

ORDER OF AFFIRMANCE

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

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

The district court confirmed the decision of the appeals officer to set appellant Ernie Wiggins' temporary total disability benefits at the 1993 average monthly wage pursuant to 1993 Statutes of Nevada, chapter 265, section 292 (wage freeze statute). Wiggins argues on appeal that (1) the wage freeze statute self-terminated on June 30, 1995, and (2) the economic situation that mandated the wage freeze has ended so there is no reason to enforce it today. We affirm the district court's order because Wiggins' claim falls within the wage freeze statute.

FACTS

The facts and procedural history of this case are not in dispute. On May 11, 1994, Wiggins suffered injuries to his left hand while working for Perini Building Company. Wiggins notified his supervisor and timely filed for workers' compensation benefits. Dr. Prutzman examined Wiggins' left hand and recommended surgery. In July 1994, Dr. Prutzman performed surgery on Wiggins' left hand. CDS Compfirst, the disability benefits administrator, paid for Wiggins' surgery, other medical

expenses, and his temporary total disability. CDS then closed Wiggins' claim.

On June 5, 1995, Wiggins contacted CDS, requesting that his claim be reopened. Dr. Rappaport examined Wiggins' left hand and ordered an MRI. CDS reopened Wiggins' claim, and Dr. Rappaport performed another surgery on Wiggins' left hand. On December 6, 1995, CDS sent Wiggins a notice that it would close his claim. Because Wiggins continued to have pain, Dr. Hunene performed another surgery on Wiggins' left hand in December 2000.

Although CDS reopened Wiggins' case and paid for his third surgery and temporary total disability, CDS detected an overpayment it made to Wiggins in his December 2000 temporary total disability check. CDS requested Wiggins to return the \$42.35 overpayment and indicated that his compensation rate was \$61.77 "maximum per day." Wiggins disputed the overpayment, contending that "[t]he [wage] freeze ended in 95 setting the PPD range back to \$65.62." Wiggins further stated that he "should be compensated for the lack of adjustment after the freeze."

In February 2001, a hearing officer considered the disputed issue and ordered CDS to pay Wiggins the wage of \$65.62 per day. The hearing officer found that "the average monthly wage freeze ended on June 30, 1995" and because Wiggins' injury occurred in 1994, his average monthly wage was the 1994 rate pursuant to NRS 616A.065. CDS promptly appealed the hearing officer's decision.

In June 2001, the appeals officer heard oral argument from both parties and reversed the hearing officer's decision. The appeals officer concluded that because a worker's rights are fixed as to the date of

injury and Wiggins' injury occurred during the wage freeze, his compensation was tied to that rate.

In July 2001, Wiggins timely petitioned for judicial review. In August 2001, Perini Building Company filed a statement of intent to participate in the action. On September 13, 2002, the district court heard oral arguments from the parties. In its order, the district court noted that the parties did not dispute any factual issue and were only arguing a question of law. The district court analyzed 1993 Statutes of Nevada, chapter 265, section 292, and reasoned that its plain meaning was to place "a 'cap' or limit on the benefits payable to injured workers by 'freezing' the average monthly wage at the 1993 level." Determining that the wage freeze statute was still in effect, the district court denied the petition and affirmed the appeals officer's decision. This appeal followed.

DISCUSSION

Standard of review

Statutory construction is a question of law that this court reviews de novo.¹ "In reviewing an agency decision, this court is free to address purely legal questions without deference to the agency's decision."² In the instant case, the parties agree that the only issue in the instant case is interpretation of the wage freeze statute. Consequently, a de novo review is proper.

¹SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

²Mirage v. State, Dep't of Administration, 110 Nev. 257, 259, 871 P.2d 317, 318 (1994).

Applicability of the wage freeze statute

Wiggins argues that the wage freeze statute is unambiguous and was intended to exist for only a two-year period. Since the two-year period has ended, Wiggins argues that he is no longer subjected to the wage freeze statute. We disagree.

Our statutory construction rules are well established. We look first at the statute's language, and if the meaning is clear, we will not consider legislative intent.³ Additionally, "[i]t is a well-recognized tenet of statutory construction that multiple legislative provisions be construed as a whole, and where possible, a statute should be read to give plain meaning to all its parts."⁴ If the statutory language is ambiguous, we will construe the statute in harmony with the Legislature's intended reason and public policy.⁵

In order to properly examine the wage freeze statute, we must first determine how temporary total disability benefits are calculated. The provisions of the wage freeze statute must coincide with NRS 616C.425. This statute requires that temporary total disability benefits be determined by the state's calculation of the "average monthly wage"⁶ and that an injured worker's average monthly wage be based on the date of

³Meridian Gold v. State, Dep't of Taxation, 119 Nev. ___, ___, 81 P.3d 516, 518 (2003).

⁴Diamond v. Swick, 117 Nev. 671, 676, 28 P.3d 1087, 1090 (2001) (quoting Gaines v. State, 116 Nev. 359, 365, 998 P.2d 166, 169-70 (2000)).

⁵Crestline Inv. Group v. Lewis, 119 Nev. 365, 368, 75 P.3d 363, 365-66 (2003).

⁶NRS 616C.475(1).

injury.⁷ Consequently, an injured worker's rights to compensation and benefits are fixed by the injury date.⁸

Also, we initially note that the Legislature has not repealed the wage freeze statute. Nor does the statute include a self-termination provision, as Wiggins alleges. The wage freeze statute provides:

1. Notwithstanding the provisions of NRS 616.027,^[9] for the purpose of calculating benefits for a temporary total disability from the effective date of this section to and including June 30, 1995, "average monthly wage" must be calculated by using the state average weekly wage on [June 18, 1993], as computed by the employment security department pursuant to the provisions of NRS 616.027.

2. This section does not affect the calculation of benefits other than those for a temporary total disability.

3. This section must not be applied to reduce the average monthly wage of an employee who has incurred an industrial injury or occupational disease before the effective date of this section.¹⁰

The language of the wage freeze statute is plain.¹¹ Additionally, this statute must be read in conjunction with NRS 616C.425.

⁷NRS 616C.425(1).

⁸Id.

⁹The Legislature superseded NRS 616.027 with NRS 616A.065.

¹⁰1993 Statutes of Nevada, chapter 265, section 292.

¹¹Because the statute's language is plain, we do not examine legislative history in interpreting it. Nevertheless, although Wiggins argues that the legislative history indicates that the statute self-

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Consequently, because an injured worker's compensation rights are based on the injury date, an employee injured during the wage freeze period, June 18, 1993, to June 30, 1995, who receives temporary total disability benefits, is subject to the provisions of the wage freeze statute. Whether an injured employee is granted temporary total disability benefits during the actual years of the wage freeze or ten years later, it is the injury date that determines the amount of benefits available.

Here, even though Wiggins experienced additional complications in 2000 related to his initial injury and these complications resulted in him seeking to reopen his industrial insurance claim, Wiggins' temporary total disability benefits are still based on his injury date, May 11, 1994. Because this injury date comes within the wage freeze statute, Wiggins' benefits are linked to the 1993 average monthly wage. Therefore, Wiggins' recent temporary total disability benefits claim must be based on the 1993 rate of \$61.77 per day instead of the 1994 rate of \$65.62.

CONCLUSION


We conclude that the wage freeze statute applies to Wiggins' claim for temporary total disability benefits. The district court did not err in denying the petition for judicial review and upholding the appeals officer's decision to keep Wiggins' temporary total disability benefits at the


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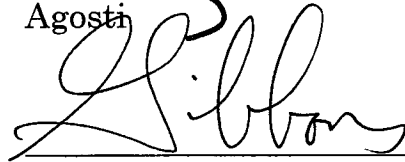
terminated, the legislative history shows no intent to increase temporary total disability benefits for workers injured during the wage freeze period if claims are subsequently reopened after 1995.

1993 "frozen" rate.¹² We, therefore,

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Nevada Attorney for Injured Workers/Carson City
Gamboa & Stovall
Washoe District Court Clerk

¹²We have reviewed Wiggins' other arguments and conclude they are without merit.