

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO CASAS,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 41988

FILED

MAY 17 2005

ORDER OF AFFIRMANCE

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

This is an appeal of a district court order denying judicial review in a workers' compensation case involving the denial of temporary total disability benefits. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

Appellant Alberto Casas accepted light-duty employment from his employer two days after sustaining a work-related injury. NRS 616C.475(5)¹ precludes temporary total disability (TTD) payments under such circumstances. Subsequently, Casas' employer discovered that Casas could not provide documentation proving that the social security number he had provided when hired was genuine. As a result, Casas was terminated.

Respondent Employers Insurance Company of Nevada (EICON) thereafter denied Casas' request for TTD benefits, claiming that Casas was not temporarily totally disabled, and that his failure to keep his

¹NRS 616C.475(5)(b) provides that payments for temporary total disability must cease when "[t]he employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7[.]"

light-duty employment was due solely to his undocumented status and not his injury. A hearing officer affirmed EICON's decision to deny TTD benefits. An appeals officer affirmed the decision of the hearing officer, citing this court's decision in Tarango v. SIIS² as well as NRS 616C.475(5). The district court subsequently denied judicial review. On appeal, Casas argues that since he could not legally be offered employment, NRS 616C.475(5) does not apply, and he is entitled to TTD benefits. We disagree.

DISCUSSION

NRS 616A.340 defines total disability as follows:

“Total disability” means incapacity resulting from an accident arising out of and in the course of employment which prevents the covered workman from engaging, for remuneration or profit, in any occupation for which he is or becomes reasonably fitted by education, training or experience.

NRS 616C.475 provides for monetary compensation for a worker who is temporarily totally disabled and unable to work. The statute calls for an employee injured at work “to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.”³ However, as noted, NRS 616C.475(5) directs that such payments must cease if the employee is offered a light-duty job for which he is suited. Here, not only did Casas' employer offer him light-duty employment, but also Casas actually worked at the light-duty job for several months before his termination.

²117 Nev. 444, 25 P.3d 175 (2001).

³NRS 616C.475(1).

Casas correctly notes that, in Tarango, this court held that “Nevada’s workers’ compensation laws apply to all injured workers within the state, regardless of immigration status.”⁴ In spite of his undocumented status, Casas did receive the workers’ compensation benefits to which he was entitled. His injury-related medical bills were paid by EICON, and when he eventually required back surgery, he received TTD benefits until a physician released him.

This court also held in Hudson v. Horseshoe Club Operating Company⁵ that an employer who discharges an injured employee in bad faith waives its right to use that discharge to deny TTD benefits.⁶ However, Casas did not provide any evidence that his employer acted in bad faith in discharging him.

Casas’ equal protection argument is also unpersuasive. This court in Tarango held that to permit an injured undocumented worker to obtain vocational training that would not have been available to a similarly injured documented worker actually violated equal protection as to the documented workers.⁷ To permit Casas to receive TTD benefits would likewise allow him to unfairly benefit from his undocumented status, since a similarly situated documented worker would not be eligible for such benefits.

⁴Tarango, 117 Nev. at 448, 25 P.3d at 178.

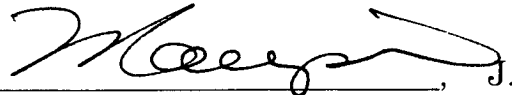
⁵112 Nev. 446, 916 P.2d 786 (1996).

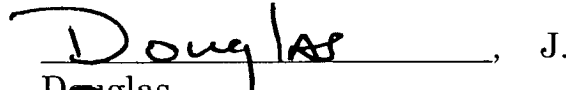
⁶Id. at 458, 916 P.2d at 793.

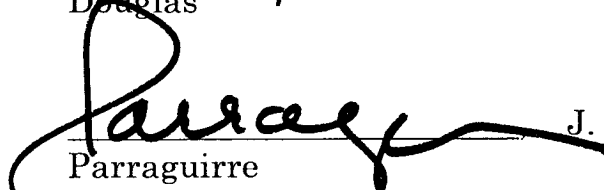
⁷Tarango at 456, 25 P.3d at 183.

Under the clear language of NRS 616C.475(5)(b), Casas ceased to be eligible for TTD benefits when his employer offered him light-duty employment. His subsequent loss of employment due to his undocumented status does not make him eligible for TTD benefits, since he was not temporarily totally disabled. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Maupin


Douglas


Parraguirre

cc: Hon. Peter I. Breen, District Judge
Marialice K. Galt
Beckett & Yott, Ltd./Carson City
Washoe District Court Clerk