

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY LEE FOGGY,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 42786

FILED

MAR 19 2004

JANETTE N. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This proper person appeal challenges a district court order entered on remand from this court. This court's September 22, 2003 order of remand directed the district court to deny, rather than dismiss on untimeliness grounds, appellant's petition for judicial review. Our order explained that although appellant's petition for review was arguably timely, appellant had no right to collect monthly permanent total disability benefits once he was incarcerated. Consequently, our order concluded that appellant's petition for judicial review had to be denied on the merits.¹ On November 4, 2003, we denied appellant's rehearing petition.

On remand, the district court did exactly what we instructed it to do: it vacated its prior order dismissing the petition for judicial review on the ground of untimeliness and denied the petition. Appellant has filed the instant appeal from that order.

Under the law of the case doctrine, when "an appellate court states a principal or rule of law in deciding a case, that rule becomes the

¹See Foggy v. EICON, Docket No. 39200 (Order Reversing and Remanding with Instructions, September 22, 2003).

law of the case and is controlling both in the lower courts and on subsequent appeals, so long as the facts remain substantially the same.”² As this court reached the merits of appellant’s arguments in its prior order, that order became law of the case. The district court followed this court’s directive on remand, and we must now affirm the district court’s order.

It is so ORDERED.³

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Michael L. Douglas, District Judge
Henry Lee Foggy
Beckett & Yott, Ltd./Las Vegas
Clark County Clerk

²Geissel v. Galbraith, 105 Nev. 101, 103 769 P.2d 1294, 1296 (1989), modified on other grounds by Willerton v. Bassham, 111 Nev. 10, 889 P.2d 823 (1995).

³Although appellant was not granted leave to proceed in proper person, see NRAP 46(b), we have received and considered appellant’s motion. Appellant has submitted a motion for leave from this court to proceed in forma pauperis, but his motion does not comply with NRAP 24(a). In particular, an appellant must first file a motion in the district court for permission to proceed in forma pauperis. Appellant’s failure to pay the supreme court filing fee or to comply with NRAP 24(a) could constitute a basis on which to dismiss this appeal.