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### Summary of Williams v. United Parcel Services, 129 Nev. Adv. Op. No. 41

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## EMPLOYMENT LAW—WORKERS COMPENSATION

### **Summary**

The Court considered when an employee, who seeks to reopen a workers' compensation claim that has been closed for over a year, is deemed to have been "off work" under NRS 616C.390(5).

### **Disposition/Outcome**

The Court concluded that a plain-meaning reading of NRS 616C.390(5) does not contain a minimum-time-off-work requirement. Finding that Appellant Williams lost time from work on the day of the accident as a result of his injury, the Court determined that Williams was not precluded by NRS 616C.390(5) from reopening his claim. Therefore, the Court reversed the district court's denial of Williams' petition for judicial review and directed the district court to remand the matter to the appeals officer for further proceedings.

### **Factual and Procedural History**

Two hours into his shift for United Parcel Services (UPS), Appellant Williams, while working with live wires on a ladder, received an electric shock that caused him to fall on his back from a height of eight feet. Williams sought medical attention within 30 minutes, and the doctor, after diagnosing Williams with an ankle contusion, lumbar abrasion and electric shock, prohibited Williams from completing his shift and from working the following day.

The insurer for UPS agreed to provide compensation for Williams' injuries to his ankle, leg, and hand, but not the injury to his back. Williams was given 70 days to appeal the claim acceptance, which he did not do. A few months later, UPS's insurer informed Williams of its intent to close the claim. Again, Williams was given 70 days to appeal the closure, but he chose not to appeal. UPS's insurer also informed Williams of his right to reopen his claim under NRS 616C.390.

Two years after his claim's closure, Williams started experiencing back pain, and Williams asked UPS's insurer to reopen his claim. UPS's insurer denied Williams' request, stating that there was a lack of medical evidence to justify the claim's reopening.

Williams appealed, and the hearing officer affirmed the insurer's denial. Williams then appealed the hearing officer's decision, but the appeals officer sided with the hearing officer. Specifically, the appeals officer interpreted NRS 616C.390 to mean that an employee was barred from reopening his closed claim after a year if "the employee did not miss at least five days of

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<sup>1</sup> By Drew Wheaton.

work as a result of the injury and ‘did not receive a permanent partial disability award.’”<sup>2</sup> The appeals officer based his interpretation of NRS 616C.390(5) on the legislative history of A.B. 46, 71<sup>st</sup> Leg. (Nev. 2001). Because Williams was not “off work” for more than five days and did not receive any benefits as contemplated by NRS 616C.390(5), the statute barred him from reopening his claim.

The district court then denied Williams petition for judicial review of the appeals officer’s decision, and this appeal followed.

## **Discussion**

Justice Saitta delivered the opinion of the court, sitting as a three-justice panel with Justices Gibbons and Douglas, who concurred.

Before examining the appeals officer’s interpretation of NRS 616C.390(5), the Court pointed out that the reopening of a claim is subject to the time limitations established by Nevada workers’ compensation statutes.<sup>3</sup> Furthermore, the failure to apply to reopen the claim within this period acts as a jurisdictional bar to the reopening of the claim.<sup>4</sup>

Turning to the appeals officer’s interpretation of NRS 616C.390(5), NRS 616C.390(5) provides that:

[a]n application to reopen a claim must be made in writing within 1 year after the date on which the claim was closed if:

- (a) The claimant was not off work as a result of the injury; and
- (b) The claimant did not receive benefits for a permanent partial disability.<sup>5</sup>

Reviewing the issue de novo, the Court noted that “when a statute is clear and unambiguous, we give effect to the plain and ordinary meaning of the words.”<sup>6</sup> Additionally, the Court need not consult extrinsic sources, such as legislative histories, to derive a statute’s meaning when there is no ambiguity.<sup>7</sup>

Here, the Court determined that the appeals officer incorrectly relied on legislative history when he concluded that an employee is able to reopen a claim after a year from its closure only if the employee missed five days of work. The Court found that the language of NRS 616C.390(5), specifically “claimant was not off work as a result of the injury,” lacked an

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<sup>2</sup> *Williams v. United Parcel Services*, 129 Nev. Adv. Op. No. 41 at 3 (Jun. 6, 2013).

<sup>3</sup> *Seino v. Emp’rs Ins. Co. of Nev.*, 111 P.3d 1107, 1110 (Nev. 2005).

<sup>4</sup> *Barnes v. Workers’ Comp. Appeals Bd.*, 2 P.3d 1180, 1186 (Cal. 2000).

<sup>5</sup> NEV. REV. STAT. § 616C.390(5) (2011).

<sup>6</sup> *Cromer v. Wilson*, 225 P.3d 788, 790 (Nev. 2010).

<sup>7</sup> *Id.*

ambiguity that called for an excursion from the four corners of the statute. Instead, the Court held that the statute clearly conditions an employee's ability to reopen a claim on "either receiving a permanent partial disability award or losing time from work" due to a work-related injury.<sup>8</sup>

In the case at bar, Williams was sent home after a medical diagnosis prohibited Williams from completing his shift. Because Williams missed the remaining time on his scheduled shift, Williams was off work as a result of his injury under the plain meaning of NRS 616C.390(5).

### **Conclusion**

The Court found that the plain meaning of NRS 616C.390(5) did not bar an employee from applying to reopen his claim after a year from its closure if the employee missed time from work as a result of the injury. The Court reversed the district court's denial of Williams' petition for judicial review and directed the district court to remand the matter to the appeals officer for further proceedings consistent with its opinion.

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<sup>8</sup> *Williams v. United Parcel Services*, 129 Nev. Adv. Op. No. 41 at 8 (Jun. 6, 2013).