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Mensah v. Corevel Corp., 131 Nev. Adv. Op. 60 (Aug. 06, 2015)

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WORKERS' COMPENSATION: DISABILITY FOR SELF-EMPLOYED WORKERS

Summary

The Court held self-employed workers may still be entitled to temporary disability and the employee's lost wages should be calculated by considering business income and losses and not strictly evidence of a traditional salary.

Background

Dzidefo Mensah was a self-employed driver who had contracted with FedEx Home Delivery. He maintained workers' compensation insurance through CorVel Corporation, as was required by his contract. During a delivery he fell and injured his shoulder. His workers' compensation claim was accepted and he received medical treatment. He was released and allowed to return to light-duty at work, but he could not complete his route due to physical restrictions.

Mensah was denied temporary disability benefits on the basis that he continued to receive the same compensation under the FedEx service contract as he did before the injury. His administrative appeal was denied because he failed to produce evidence of his pre-injury salary and his post-injury salary. Because he could not produce documentation, he could not prove the amount of his lost wages. The district court subsequently denied his petition for judicial review.

Discussion

The Court stressed that generally, injured workers are permitted to receive temporary disability in the amount of the difference of their compensation before and after the injury. The statutes, however, do not specify how loss of wages should be calculated for self-employed workers. In the present case, Mensah was indisputably injured in an industrial accident and was therefore eligible to receive temporary disability based on the loss of his wages. The appeals officer, however, found that Mensah's tax filings, in lieu of paystubs, were insufficient to establish his salary and determine his lost wages.

Mensah was self-employed. It is reasonable that he did not pay himself a traditional salary. The record, however, shows that Mensah received compensation from FedEx Home Delivery under the service contract. He also was able to provide pay stubs for the replacement driver that covered his route while he was injured. Statements showing business expenses and income, may establish Mensah's lost earnings, which may consist of more than just salary.

¹ By Jaymes Orr.

Conclusion

On remand, the district court should instruct the appeals officer to consider the business income and expenses to determine earnings and not limit its analysis to a salary review.