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### Summary of Elizondo v. Hood Mach., Inc., 129 Nev. Adv. Op. 84

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*Nevada Law Journal*

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CIVIL APPEAL: ADMINISTRATIVE AGENCY

**Summary**

The Court determined two issues: (1) whether an appeals officer's conclusory order in a workers' compensation matter failed to meet the statutory requirements of NRS 233B.125; and (2) whether the doctrines of claim and issue preclusion apply to require dismissal of a fourth request to reopen an industrial injury claim under NRS 616C.390.

**Disposition**

A written order from an administrative proceeding must include findings of fact and conclusions of law under NRS 233B.125. Without such, it is impossible for the court to determine if there has been a change of circumstances warranting a reopening of the claim under NRS 616C.390.

**Factual and Procedural History**

In 2000, appellant Carlos Elizondo filed an industrial injury claim as a result of an abdominal injury while employed by respondent Hood Machine. In 2001, the physician who conducted Elizondo's permanent partial disability (PPD) examination gave him a zero-percent disability rating, and his claim was closed by respondent Employers Insurance Company of Nevada (EICON).

Elizondo sought to have his claim reopened three times based upon new opinions from physicians; each time the claim was denied. After his claim was again denied in 2007, Elizondo petitioned the district court for judicial review of the denial. The district court denied his petition because substantial evidence supported the appeals officer's determination. Elizondo appealed the district court's order, and Nevada Supreme Court affirmed the district court's decision.

In 2011, Elizondo filed a fourth request to reopen his claim and was again denied. He administratively appealed the denial of his request, and the hearing officer affirmed the denial because the medical report Elizondo provided did not meet the requirements of NRS 616C.390, which states that the standard required for admissibility of an expert opinion regarding causation is a reasonable degree of medical probability. Elizondo then administratively appealed the decision, and the appeal's officer denied it without providing any factual or legal explanation.

Elizondo then filed a petition for judicial review to the district court arguing that the appeals officer's order failed to meet the statutory requirements of NRS 233B.125 and that it was not supported by substantial evidence. EICON contended that Elizondo was precluded from reopening his claim under the doctrine of res judicata. The district court denied Elizondo's petition because he did not state a new cause of action that could withstand the application of res judicata. Elizondo appealed.

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<sup>1</sup> By Jennifer Cutshall.

## **Discussion**

*The appeals officer's order failed to meet the statutory requirements of NRS 233B.125*

Elizondo argued that the appeals officer's order failed to meet the statutory requirements of NRS 233B.125<sup>2</sup> because the order summarily dismissed his claim and did not include any specific findings of fact or citation to the law. He also argued that the order failed to support its final determination by applying the facts to the law. The Nevada Supreme Court agreed.

NRS 233B.125 governs adverse written orders in administrative proceedings and requires that a final decision must include separately stated findings of fact and conclusions of law. Here, the appeals officer's order "made reference to and generally adopted EICON's arguments as pleaded in its motion to dismiss" and contained no factual findings. Therefore, the order "fails to meet the statutory requirements of NRS 233B.125 and is thus procedurally deficient." Because the order is deficient, it "precludes adequate review on appeal and prevents this Court from determining whether Elizondo's substantial rights were violated."

*The appeals officer erred in applying the doctrines of claim and issue preclusion to bar Elizondo's request to reopen his workers' compensation claim pursuant to NRS 616C.390.*

Elizondo argues that his statutory right under NRS 616C.390<sup>3</sup> to request a reopening of his claim cannot be defeated by application of res judicata because such an application was rejected in *Jerry's Nugget v. Keith*<sup>4</sup>. In *Jerry's Nugget*, the court determined that the doctrines of issue and claim preclusion cannot be used as "defenses to reopening a [worker's compensation] claim if an employee can show a change in circumstance." Thus, the proper analysis is whether there has been a change of circumstances. Because the district court failed to provide any findings of fact or conclusions of law, "this Court cannot properly review the appeals officer's determination that there was no change of circumstances warranting reopening under NRS 616C.390."

## **Conclusion**

A written order from an administrative proceeding must include findings of fact and conclusions of law under NRS 233B.125, and the order here contained neither. Because no findings of fact or conclusions of law are available in this case, it is impossible for the court to determine if there have been changes of circumstance warranting a reopening of the claim under NRS 616C.390. The court remanded the case to the district court so that "findings of fact and conclusions of law may be properly made."

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<sup>2</sup> NEV. REV. STAT. § 233B.125 (2013).

<sup>3</sup> NEV. REV. STAT. § 616C.390 (2013).

<sup>4</sup> 111 Nev. 49, 888 P.2d 921 (1995).