

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

5-2-2013

Summary of City of Las Vegas v. Evans, 129 Nev. Adv. Op. 31

Timothy A. Wiseman
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Labor and Employment Law Commons](#)

Recommended Citation

Wiseman, Timothy A., "Summary of City of Las Vegas v. Evans, 129 Nev. Adv. Op. 31" (2013). *Nevada Supreme Court Summaries*. 95.

<https://scholars.law.unlv.edu/nvscs/95>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

EMPLOYMENT LAW – Workers’ Compensation

Summary

The court considered whether a firefighter who does not qualify for a presumption that his cancer is a compensable occupational disease may still seek to prove it is a compensable occupational disease without the benefit of the presumption. The court also considered whether the appeals officer erred in awarding benefits in this case for a firefighter’s cancer.

Disposition/Outcome

The court found that failing to qualify for a presumption that an illness is an occupational disease for workers’ compensation purposes does not preclude a finding that the disease is an occupational disease eligible for compensation through medical testimony. The court also found that the appeals officer had not abused her discretion.

Factual and Procedural History

Evans was a fire fighter with the City of Las Vegas for four years before being diagnosed with cancer. He responded to numerous fires and was exposed to carcinogens. He filed for workers’ compensation benefits for his cancer but was initially denied. He appealed to the Department of Administration Hearings Division, where a hearings officer also denied his claim. The hearings officer asserted that the normal standard of determining compensable occupational disease² did not apply since there was a standard to presume that a firefighter’s cancer is presumed to be a compensable occupational disease.³ The hearings officer further asserted that the presumption did not apply to Evans since it required five years or more as a firefighter to come into effect⁴ and he had only been a firefighter for four years.

The appeals officer affirmed that the presumption did not apply. But, after taking extensive medical testimony, found that the normal standard could apply and that Evans had met

¹ By Timothy A. Wiseman

² NEV. REV. STAT. § 617.440 (2011).

³ NEV. REV. STAT. § 617.453 (2011).

⁴ NEV. REV. STAT. § 617.453(1) (2011).

the burden of proof. The city then appealed to the district court which declined to review the decision. The city thus appealed to the Nevada Supreme Court arguing that only the presumption could apply and that the appeals officer had erred in saying that his burden had been met.

Discussion

The Nevada Supreme Court, focusing on the plain meaning of the statute, declared that failure to qualify for a presumption that cancer was an occupational disease under NRS 617.443 does not prevent a city employee from seeking compensation under the normal standard in NRS 617.440 and NRS 617.358. Rather, qualifying under NRS 617.443 would create a rebuttable presumption in the employee's favor and failure to qualify for that presumption would merely require the employee to establish, by a preponderance of the evidence, that the disease resulted from the course of their employment.

The court also considered whether the appeals officer abused her discretion in finding that the disease arose from Evan's employment. The court noted that it reviews only for abuse of discretion and does not substitute its own judgment for the original trier of fact. It found that substantial medical testimony was adequately reviewed and that the appeals officer did not abuse her discretion.

Conclusion

The court ruled that NRS 617.453 provides a rebuttable presumption that cancer is an occupational disease for those that meet its qualifications, but failure to meet its qualifications does not preclude a city employee with cancer from seeking workers' compensation by proving through a preponderance of the evidence that it is an occupational disease. Further, the appeals officer's ruling that Evan's cancer was a compensable occupational disease was supported by substantial evidence and was not an abuse of discretion.