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Summary of Holiday Retirement Corp. v. State, DIR, 128 Nev. Adv. Op. No. 13

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WORKER'S COMPENSATION – REIMBURSEMENT FOR PERMANENT PHYSICAL
IMPAIRMENT

Summary

The Court considered an appeal from a district court order denying a petition for judicial review in a worker's compensation action.

Disposition/Outcome

The Court concluded that the district court did not err in denying judicial review because an employer is required to acquire knowledge of an employee's permanent physical impairment before a subsequent injury occurs to qualify for reimbursement from the subsequent injury for private carriers under NRS 616B.587(4).

Factual and Procedural History

Appellant Holiday Retirement Corporation hired a woman and her husband as co-managers of a retirement residence. In 2003, the woman suffered a lumbar strain arising out of and in the course of her employment. An MRI revealed evidence of prior back surgeries. This was the first record provided to Holiday of the woman's previous permanent physical impairment. The woman underwent surgery to repair the 2003 injury. She returned to work under modified work duty restrictions for four hours per day, five days a week. Less than one year after the injury, however, she and her husband resigned. Subsequently, an impairment-rating examiner designated by respondent State of Nevada of Industrial Relations ("DIR") suggested she receive a permanent partial disability ("PPD") award based on 26-percent whole person impairment, which was paid.

Holiday's insurance carrier sought reimbursement from the Subsequent Injury Account for Private Carriers ("Account") pursuant to NRS 616B.587. The Account provides reimbursement when an employee sustains an injury entitling him or her to compensation for a disability that is substantially greater due to the combined effects of a preexisting injury and the subsequent injury than that which would have resulted from the subsequent injury alone, provided certain conditions are met.² One such condition is that the insurer "establish[es] by written records that the employer had knowledge of the 'permanent physical impairment' at the time the employee was hired or that the employee was retained in employment after the employer acquired such knowledge."³

¹ By Jason L. DeForest

² NEV. REV. STAT. § 616B.587 (2007).

³ *Id.* at § 616B.587(4).

DIR denied the request for reimbursement, finding that Holiday did not satisfy NRS 616B.587 because it did not have knowledge of its employee's prior permanent physical impairment until after the 2003 injury, and there was no indication that it provided a full duty or permanent full duty position to the woman. Holiday administratively challenged the DIR's decision, but the appeals officer affirmed, concluding that substantial evidence in the record supported DIR's conclusion that NRS 616B.587(4) was not satisfied. Holiday filed a petition for judicial review, which the district court denied.

Discussion

The Court determined that NRS 616B.587(4) was not ambiguous, and thus, relied on the plain language of the statute. According to the Court, under NRS 616B.587(4) a private carrier may qualify for reimbursement under the account in one of two ways: by establishing with written records that the employer (1) had knowledge of the permanent physical impairment at the time the employee was hired or (2) retained its employee after it acquired knowledge of the permanent physical impairment. The parties agreed that Holiday did not have knowledge of the impairment prior to hiring the woman, but disputed whether an employer must acquire knowledge of an employee's impairment before the subsequent injury occurs in order to satisfy the retention requirement of NRS 616B.587(4).

The majority of jurisdictions that have considered such a knowledge requirement within the context of a subsequent injury fund have held that an employer must acquire knowledge of an employee's permanent physical impairment before the subsequent injury occurs to qualify for reimbursement.⁴

Conclusion

The Court adopted the reasoning of the majority of jurisdictions and held that an employer must acquire knowledge of an employee's permanent physical impairment before the subsequent injury occurs to qualify for reimbursement under NRS 616B.587(4). Thus, the Court affirmed the district court's order denying judicial review.

⁴ See *Special Fund Div. v. Indus. Comm'n of Ariz.*, 184 Ariz. 363, 367, 909 P.2d 430, 434 (Ariz. Ct. App. 1995).