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### Summary of Public Agency Compensation Trust v. Blake, 127 Nev. Adv. Op. No. 77

Tim Mott  
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### **Summary**

The Court considers an appeal from a district court order denying a petition for judicial review in a workers’ compensation action.

### **Disposition/Outcome**

The Court reversed the district court’s order denying the petition for judicial review and remanded the case to the district court with instructions to remand it to the appeals officer so that Respondent’s PPD compensation can be calculated using the 17-percent impairment difference.

### **Factual and Procedural History**

On December 15, 2004, Respondent Dale Blake (“Blake”) injured his back during the course and in the scope of his employment. Prior to this accident, Respondent suffered other accidents that resulted in injuries to his lower back. After Respondent’s 1995 accident, he received a permanent partial disability (“PPD”) based on a 14-percent whole person impairment rating using the second edition of the AMA Guides.

In 2003, the Legislature mandated the use of the fifth edition of the AMA Guides for calculating PPD awards. Respondent’s 2004 injury—evaluated under the fifth edition—established that Respondent suffered a 40-percent whole person impairment. After Appellant<sup>2</sup> questioned the rating physician’s determination of impairment based on the fact that the previous ratings were made with a different edition, the rating physician estimated that Respondent’s prior level of impairment was equal to a 23-percent impairment under the fifth edition. Subtracting the estimated 23-percent impairment from the current 40-percent whole person impairment, the doctor determined that the PPD award should be apportioned to compensate Respondent for 17-percent impairment for the 2004 injury.

Respondent administratively appealed the decision and an appeals officer ordered Appellant to offer a PPD award based on the original 26-percent impairment. Appellant petitioned for judicial review pursuant to NRS 233B.125 and the district court upheld the appeals officer’s finding. Appellant now appeals to the Supreme Court of Nevada.

### **Discussion**

#### **NRS 616C.490(9) is plain and unambiguous**

Justice Hardesty, writing for the Court, reversed the district court’s decision and remanded with instructions. NRS 616C.490 applies when a worker with a PPD suffers a

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<sup>1</sup> By Tim Mott.

<sup>2</sup> Appellant was the insurer for Respondent’s employer when the 2004 accident occurred.

subsequent disability from an employment-related accident and requires the prior impairment's percentage to be subtracted from the current impairment. However, there are situations when multiple impairments are calculated using different editions of the AMA Guides<sup>3</sup>—such as the present case—and the determinations are not comparable.

To remedy these situations, the Court interpreted NRS 616C.490 and determined that its plain and unambiguous language clearly establishes “that a previous disability must be calculated ‘as it existed at the time of the subsequent injury.’”<sup>4</sup> This interpretation is justified by the purpose of the workers’ compensation scheme—“to compensate for the actual impairment to the worker.”<sup>5</sup> Additionally, this interpretation is consistent with the Legislature’s intent to permit only one award per injury.<sup>6</sup>

#### NAC 616C.490(4) impermissibly conflicts with NRS 616C.490(9)

While determining the meaning of an administrative regulation, the Court generally defers to the agency’s interpretation, unless that interpretation conflicts with statutory authority. NAC 616C.490(4) “contemplates the deduction of a previous disability percentage from the current disability percentage without requiring the prior disability percentage to be assessed ‘as it existed at the time of the subsequent injury.’”<sup>7</sup> Thus, based on the plain and unambiguous language of NRS 616C.490(9), NAC 616C.490(4) is in direct conflict with it and is therefore invalid.

#### **Conclusion**

NRS 616C.490(9) requires that the calculation for prior and subsequent work-related injuries be reconciled by first using the current edition of the AMA Guides to determine both the percentage of the entire disability and the percentage of the previous disability, and then subtracting the latter number from the former to calculate the award for the current injury. The Court further concluded that to the extent that NAC 616C.490 conflicts with the aforementioned interpretation of NRS 616C.490, it is invalid.

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<sup>3</sup> The American Medical Association periodically publishes new editions of the AMA Guides and the Nevada Legislature frequently amends the statute to comply.

<sup>4</sup> *Public Agency Compensation Trust v. Blake*, 127 Nev. Adv. Op. No. 77 at 6 (November 23, 2011) (quoting Nev. Rev. Stat. § 616C.490(9) (2009)).

<sup>5</sup> *Id.* at 6-7 (citing NAC 616C.490).

<sup>6</sup> *See* *SIIS v. Bokelman*, 113 Nev. 1116, 1123–24, 946 P.2d 179, 184 (1997); *Ransier v. SIIS*, 104 Nev. 742, 744, 766 P.2d 274, 275 (1988).

<sup>7</sup> *Blake*, 127 Nev. Adv. Op. No. 77 at 8 (citing Nev. Rev. Stat. § 616C.490).