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Summary of City Of Las Vegas v. Lawson, 126 Nev. Adv. Op. No. 52

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City Of Las Vegas v. Lawson, 126 Nev. Adv. Op. No. 52 (December 30, 2010)[1]
ADMINISTRATIVE LAW – WORKERS' COMPENSATION

Disposition/Outcome

District court's denial to review administrative hearing affirmed because claimant's condition satisfied the statutory requirements.

Factual and Procedural History

Robin Lawson ("Lawson") began working for the city of Las Vegas ("the city") in 1992. In 1997, Lawson's doctor diagnosed her with breast cancer and treated her. In 2004, Lawson's cancer recurred and she underwent a double mastectomy. In a post-operation meeting, she asked her doctor if her cancer likely arose from her work as a firefighter. He informed her he believed her work caused her cancer and advised her to stop working. On March 3, 2005, Lawson filed a claim for workers' compensation.

The city denied Lawson's claim for two reasons. First, the city asserted Lawson did not timely file her claim under Nevada Revised Statutes ("NRS") 617.342 and 617.344.[2] Second, the city claimed Lawson's cancer did not arise out of and in the course of her employment.[3] Lawson requested a hearing before the Nevada Department of Administration, Hearings Division under NRS 616C.315 and 616C.320. The hearing officer concluded a question existed "as to the etiology of [Lawson's] diagnosed breast cancer" and remanded to the city with instructions to conduct an independent medical examination.

After reviewing the independent examination's findings that medical literature supported a link between Lawson's cancer and her exposure to carcinogens, the city again denied Lawson's claim, asserting her cancer did not arise out of and in the course of her employment. After losing an appeal to a hearing officer, Lawson appealed again under NRS 616C.345. The appeals officer heard testimony from Lawson's original doctor and found (1) that Lawson's exposure to two known carcinogens—benzene and PAHs—was reasonably connected to her breast cancer, and (2) therefore, under NRS 617.453(5), it was presumed Lawson's cancer arose out of and in the course of her employment. The appeals officer also found the city did not rebut this presumption.

The district court denied the city's petition for judicial review of the appeals officer's decision, and the city appealed to the Nevada Supreme Court.

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[1] By Dan Hill.
[2] NRS 617.342 requires an allegedly injured worker to file a notice of occupational injury within seven days. NRS 617.344 requires an allegedly injured worker to file a workers' compensation claim within ninety days.
[3] *See* NEV. REV. STAT. 617.358 (2007).

Discussion

Lawson timely filed her claims

Writing for a unanimous panel of three, Justice Hardesty emphasized that studies published after Lawson's initial 1997 diagnosis indicated a possible connection between carcinogens firefighters encounter and breast cancer. According to admitted evidence and Lawson's testimony before the appeals hearing, Lawson's doctor informed Lawson her cancer was work-related for the first time on January 24, 2005. Because Lawson notified the city of her disease the same day and filed her workers' compensation claim within ninety days from that date, the appeals officer concluded Lawson satisfied NRS 617.342 and 617.344. The Court found that the evidence supported the hearing officer's conclusion and she did not abuse her discretion because a reasonable person could have found the evidence adequate.

Lawson was exposed to a known carcinogen

Cancer is a compensable occupational disease if a firefighter can show "(1) [She] was exposed, while in the course of employment, to a known carcinogen as defined by the International Agency for Research on Cancer [IARC] or the National Toxicology Program [NTP]; and (2) The carcinogen is reasonably associated with the disabling cancer."[4]

Although NRS 617.453(2) lists PAHs as a known carcinogen for certain types of cancers, neither the IARC nor the NTP label PAHs known carcinogens. The Court concluded the statutory requirement that either the IARC or NTP must label the allegedly injurious carcinogen as known was unambiguous, and therefore found that PAHs are not known carcinogens for the purposes of NRS 617.453(a). The city conceded that benzene is a known carcinogen to which Lawson was exposed.

Lawson's breast cancer is reasonably related to benzene exposure

The Court reasoned that just because the IARC and NRS 617.453(2) do not link benzene to breast cancer does not preclude Lawson from offering medical evidence to demonstrate independently a reasonable association between the two.[5]

In this case, the appeals officer admitted expert testimony from an oncologist who cited a number of studies[6] that concluded a firefighter's exposure to benzene increases her chance of developing breast cancer. After considering all of the evidence, the appeals officer found that PAHs and benzene are both reasonably associated with breast cancer. Accordingly, it was

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[4] NEV. REV. STAT. 617.453(1) (2007).
[5] *See* NEV. REV. STAT. 617.453(3) (2007) (permitting claimants to demonstrate independently a substance is a known carcinogen reasonably related to their cancer).
[6] *See e.g.* Sandra A. Petralia, *Risk of Premenopausal Breast Cancer in Association with Occupational Exposure to PAHs and Benzene*, 25 SCANDINAVIAN J. OF WORK, ENV'T & HEALTH 215 (1999).

presumed Lawson's cancer arose from and in the course of her employment with the city.[7] On appeal, the Court held a reasonable person could have found from the totality of the evidence that exposure to benzene alone was reasonably associated with Lawson's breast cancer, and that therefore the appeals officer did not abuse her discretion.

The city failed to rebut the presumption that Lawson's cancer arose from her employment

If, after a party seeking to rebut a presumed fact introduces its evidence, a reasonable person would agree the existence of the presumed fact is more probable than not, the opposing party has failed to rebut the presumption.[8] Although the city presented testimony that conflicted with Lawson's expert witness, the Court found sufficient evidence supported the appeals officer's conclusion and she did not abuse her discretion. Although the city argued to the Court that other causes led to Lawson's cancer, the Court declined to address the issue because the city did not properly raise it below.

Justices Douglas and Pickering concurred.

Conclusion

An employee's clock to file a notice of occupational injury and workers' compensation claim does not start running if she could not reasonably have known her injury arose from her work. A claimant can offer medical evidence to demonstrate independently a reasonable association between a known carcinogen and her disease.

[7] *See* NEV. REV. STAT. 617.453(5) (2007).
[8] Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 366, 184 P.3d 378, 386 (2008).