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Summary of Vredenburg v. Sedgwick CMS and Flamingo Hilton-Laughlin, 124 Nev. Adv. Op. No. 53

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Vredenburg v. Sedgwick CMS and Flamingo Hilton-Laughlin, 124 Nev. Adv. Op. No. 53 (July 24, 2008)[1]

INSURANCE LAW - WORKER'S COMPENSATION

Summary

Vredenburg appeals a district court order denying her petition for judicial review of her workman's compensation matter.

Disposition/Outcome

The district court's dismissal of Vredenburg's petition for judicial review is reversed and remanded with instructions. The court concludes the workers' compensation willful self-injury exclusion does not preclude a surviving family member from recovering workers' compensation and death benefits where the deceased's suicide is sufficiently causally linked to his industrial industry. Sufficient causation is established if the claimant shows (1) the deceased suffered an industrial injury, (2) the industrial injury caused a psychological condition severe enough to overcome the deceased's rational judgment, and (3) the psychological condition caused the deceased to commit suicide. The appeals officer in this case misapplied the test and her fact-based conclusions were unsupported by substantial evidence.

Factual and Procedural History

Danny Vredenburg injured his back when he slipped on a flight of stairs while working as a bartender for Flamingo Hilton-Laughlin. Danny experienced constant pain from this injury. He underwent fusion surgery, but it failed to relieve his pain. He also underwent extensive pain management therapy, which also failed to correct his condition. Danny was eventually diagnosed with "failed back syndrome" and prescribed strong pain medication, antidepressants, muscle relaxants, epidural injections, and, eventually, a surgically implanted morphine infusion pump in his spine. Nothing helped. Dr. Kim, one of Danny's pain management physicians, stated that Danny's chronic pain caused him to become "psychologically de-stabilized." Danny eventually committed suicide. Dr. Anderson opined that Danny committed suicide because of his unrelenting intractable pain.

Based on Dr. Anderson's opinion, Sharon Vredenburg, Danny's surviving spouse, filed a workers' compensation claim for death benefits because Danny took his life because of the constant pain from his industrial injury. The Flamingo's insurance administrator denied the claim. The hearing officer affirmed the denial and Vredenburg appealed to an appeals officer. Although no test had been established to address this issue at the time of the appeal, Vredenburg argued that her claim was compensable under the chain-of-causation test followed by the Arizona Supreme Court.[2] The appeals officer disagreed and affirmed the claim denial because (1) the chain-of-causation test was not binding in Nevada; (2) even if it was, Graver Tank was distinguishable because Danny's suicide was deliberate and not the product of insanity; and (3) Vredenburg did not conclusively establish that Danny was devoid of rationality and dominated

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[1] By Holly Ludwig.

[2] Graver Tank & Mfg. Co. v. Industrial Commission, 399 P.2d 664, 668 (Ariz. 1965).

by insanity directly caused by his industrial injury. Vredenburg's petition for judicial review in the district court was denied and this appeal followed.

Discussion

The appeals officer's factual and legal conclusions are reviewed for clear error or an abuse of discretion.[3] Pure questions of law, like the question addressed in this case, are reviewed de novo.[4]

N.R.S. 616C.230(1) states that an employee's death is not compensable under worker's compensation if it results from a "willful intention" to inflict self-injury. The court has never addressed under what circumstances suicides can be considered non-willful under N.R.S. 616C.230(1). The issue is whether the court should adopt the more restrictive minority approach for causation (voluntary willful choice test) or the majority test (chain-of-causation test).

The voluntary willful choice test compensates for suicide only if it (1) was caused by an uncontrollable impulse or delirium of frenzy, and (2) occurred when the employee was irrational and unaware of the physical consequences of his actions.[5] The court declines to adopt this approach because the first prong is underinclusive in that it only compensates suicides that are dramatic and occur within a short time after the injury and the second prong contained an overly restrictive criminal standard of insanity. Moreover, this test has only been adopted by a minority of states, many of which have modified it or abandoned it completely.

Under the chain-of-causation test, the claimant must show a clear chain of causation between the industrial injury and the employee's suicide.[6] Specifically, the claimant must prove (1) the employee suffered an industrial injury, (2) the industrial injury caused a psychological condition severe enough to overcome the employee's rational judgment, and (3) the psychological condition caused the employee to commit suicide.[7] The court adopts this approach because it largely eliminates the volition and knowledge problems under the voluntary willful choice test, it is more closely aligned with the remedial purpose of the Nevada workers' compensation statutes,[8] and it aligns with Nevada's doctrine of compensable consequences.[9]

The appeals officer's decision in this case is factually and legally erroneous. First, the officer applied the minority willful choice test by concluding that an adequate causal connection was not established because Danny deliberately decided to commit suicide. Whether an employee acts deliberately is irrelevant under the chain-of-causation test. Second, the officer

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[3] Manwill v. Clark County, 162 P.3d 876, 879 n.4 (Nev. 2007).
[4] Id. at 879.
[5] 2 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 38.02[2], 38-5 (2007) [hereinafter Workers' Compensation Law]. These two prongs were distilled from Sponatski by later commentators and courts. See, e.g., Saunders v. Texas Employers' Ins. Ass'n, 526 S.W.2d 515, 517 (Tex. 1975) (citing this distillation with approval).
[6] Workers' Compensation Law § 38.02[1], at 38-5; Modern Worker's Compensation § 115:5, at 6 (1993).
[7] See Modern Worker's Compensation § 115:5 at 6 (1993); see, e.g., Stalworth v. W.C.A.B. (County of Delaware), 815 A.2d 23, 28 (Pa. Commw. Ct. 2002); Ahn v. Frito-Lay, Inc., 756 P.2d 40, 41 (Or. Ct. App. 1988).
[8] See, e.g., Gallagher v. City of Las Vegas, 114 Nev. 595, 600, 959 P.2d 519, 521 (1998); In re Dube's Case, 872 N.E.2d 1171, 1176 (Mass. App. Ct. 2007); Globe Sec. Systems Co. v. W.C.A.B., 544 A.2d 953, 957 (Pa. 1988).
[9] See Roberts v. SIIS, 114 Nev. 364, 368-69, 956 P.2d 790, 792-93 (1998); Imperial Palace v. Dawson, 102 Nev. 88, 91, 715 P.2d 1318, 1320 (1986).

required Vredenburg to produce conclusive evidence that Danny's industrial injury caused him to become irrational and commit suicide. However, a claimant must only establish the causal nexus by a preponderance of the evidence.[10] Last, the officer's finding that Danny's suicide resulted from something other than his injury is against the weight of the evidence.

Conclusion

If the cause of an employee's suicide is causally linked to an industrial injury, it may be a non-willful death under Nevada's worker's compensation scheme. The court adopts the chain-of-causation test to determine whether a sufficient causal nexus has been established. The appeals officer's decision in this case was clearly erroneous because the officer misapplied the chain-of-causation test and her factual findings are unsupported by the record. Thus, the district court's order denying Vredenburg's petition for judicial review is reversed and remanded with instructions to the district court to remand the matter to the appeals officer for proceedings consistent with this opinion.

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[10] See McClanahan v. Raley's, Inc., 117 Nev. 921, 925-26, 34 P.3d 573, 576 (2001) ("'[P]reponderance of the evidence' merely refers to '[t]he greater weight of the evidence.'" (quoting Black's Law Dictionary 1201 (7th ed. 1999)). Furthermore, to the extent the appeals officer's decision suggests that Graver Tank requires expert medical testimony to succeed under the chain-of-causation test, we disagree. As one recent Arizona appellate court noted when applying Graver Tank, expert medical testimony is not necessary where causation is clearly apparent without it. T.W.M. Custom Framing v. Industrial Com'n, 6 P.3d 745, 749 (Ariz. Ct. App. 2000); see United Exposition Service Co. v. SIIS, 109 Nev. 421, 424-25, 851 P.2d 423, 425 (1993) (requiring medical testimony or sufficient facts to demonstrate the causal connection between an industrial injury and a subsequent injury); see also Workers' Compensation Law § 38.05, at 38-18.