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7-26-2007

### Summary of *Manwill v. Clark County*, 123 Nev. Adv. Op. No. 28

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*Nevada Law Journal*

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#### Recommended Citation

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***Manwill v. Clark County*, 123 Nev. Adv. Op. No. 28 (July 26, 2007)<sup>1</sup>**

**EMPLOYMENT LAW – OCCUPATIONAL DISEASES**

**Summary**

Appeal from district court order denying judicial review in an occupational disease case.

**Disposition/Outcome**

The Nevada Supreme Court reversed the district court order denying judicial review and remanded to the district court with instructions to grant judicial review and remanded the matter for additional administrative proceedings.

**Factual and Procedural History**

Buddy Manwill was employed as a Clark County firefighter from 1981 to 2006. During his 1991 annual physical examination, Manwill revealed that in 1984 he was diagnosed with pericarditis (inflammation of fibrous tissue surrounding the heart). Despite this revelation, Manwill was cleared for full duty. Beginning in 1996, Manwill's medical tests revealed abnormal findings, suggesting he may have hypertensive disease or congenital heart disease. During the following years, Manwill continued to be evaluated and his tests continued to come back abnormal. Nevertheless, he was cleared for full-duty work as a firefighter with light-duty job restrictions intermittently imposed. In 2005, Manwill's tests revealed constrictive pericarditis and the physician recommended he undergo diagnostic catheterization and consideration for a pericardiectomy. Although Manwill was still released for full duty after this finding, he decided to file an occupational disease claim for constrictive pericarditis.

Manwill's claim was summarily denied in a letter citing to NRS 617.457(1), which creates a conclusive presumption entitling firefighters with heart disease to occupational disease benefits from the date of disablement, so long as the date of disablement occurs at least five years after full-time, uninterrupted work as a firefighter.<sup>2</sup> Manwill administratively appealed the claim, but the appeals officer determined that the conclusive presumption statute did not apply to his claim because the diagnosis of his heart condition predated the completion of his five years' employment vesting period and his congenital heart condition had merely progressed over the years irrespective of his occupation.<sup>3</sup> After the district court denied judicial review, Manwill appealed to the Nevada Supreme Court.

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<sup>1</sup> Summarized by Erin Phillips

<sup>2</sup> NEV. REV. STAT. 617.457(1).

<sup>3</sup> It is unclear from the order whether and how the appeals officer concluded that Manwill's condition was congenital.

## **Discussion**

In Nevada, a person who seeks compensation for an occupational disease must establish that the disease arose out of and in the course of employment by a preponderance of the evidence.<sup>4</sup> However, under NRS 617.457(1), this requirement is waived for claimants who are disabled by heart disease after continuously working as full-time firefighters for five or more years.<sup>5</sup> Under the plain language of this provision, a firefighter seeking occupational disease benefits only has to show 1) heart disease, and 2) five years' qualifying employment before disablement. He is not required to demonstrate that his occupation actually contributed to his heart disease. Thus, as long as the firefighter qualifies for benefits under the terms of the statute, it doesn't matter if there were preexisting symptoms or conditions, nor does it matter if the heart disease was congenital, idiopathic or otherwise induced.<sup>6</sup>

In this case, there is no dispute that Manwill worked in a full-time, continuous, uninterrupted, and salaried firefighter position for five or more years before the date of disablement, as required by the statute. Therefore, Manwill was entitled to NRS 617.457(1)'s conclusive presumption that his heart disease arose out of and in the course of employment as long as his date of disablement occurred after the five-year period, even if his heart disease was apparent before then. Accordingly, the Court determined that the appeals officer clearly erred in concluding otherwise and reversed the district court's order denying judicial review. Nevertheless, the Court remanded the matter because the appeals officer did not determine whether Manwill was disabled from his heart disease, which is required in order to obtain compensation under the statute. On remand, the district court is instructed to grant judicial review and remand the matter for additional administrative proceedings to determine whether Manwill is entitled to occupational disease compensation in light of the Court's opinion and NRS 617.457.

## **Conclusion**

The Court concluded that NRS 617.472(1)'s conclusive presumption entitles a claimant to occupational disease compensation from the date they are deemed disabled, so long as the date occurs after at least five years of full-time, continuous work as a firefighter. The onset of heart disease before completion of the five-year vesting period does not affect the statutory presumption. Reversed and remanded.

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<sup>4</sup> NEV. REV. STAT. 617.358(1).

<sup>5</sup> NEV. REV. STAT. 617.457(1) provides that

[n]otwithstanding any other provision of this chapter, disease of the heart of a person who, for 5 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter or police office in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment.

<sup>6</sup> See *Gallagher v. City of Las Vegas*, 114 Nev. 595, 601 n.9, 959 P.2d 519, 522 n.9 (Nev. 1998).