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Recommended Citation

Nielsen, Aubree, "Summary of Flamingo Hilton v. Gilbert, 122 Nev. Adv. Op. No. 108" (2006). *Nevada Supreme Court Summaries*. 506.

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***Flamingo Hilton v. Gilbert*, 122 Nev. Adv. Op. No. 108 (Dec. 28, 2006)¹**

EMPLOYMENT LAW — ADMINISTRATIVE APPEAL

Summary

Appeal from a district court order denying a petition for judicial review in a workers' compensation matter.

Disposition/Outcome

The court affirmed the district court's order denying judicial review.

Factual and Procedural History

John Gilbert sustained an injury while working for the Flamingo Hotel in 2001. He filed a worker's compensation claim, and began treatment for the injury. On April 22, 2004, the treating physician determined that Mr. Gilbert's condition was stable, and Mr. Gilbert was to be evaluated for a permanent partial disability (PPD). The physician also indicated that Mr. Gilbert needed continued medication for pain. The physician then made a legally incorrect statement that Mr. Gilbert should obtain this pain medication through his private insurance once his worker's compensation claim was closed.

Flamingo Hotel's insurer sent Mr. Gilbert a letter on April 28, 2004, stating that Mr. Gilbert's claim was closed to further treatment, except for the PPD evaluation and any previously authorized treatments and/or prescriptions. The insurer sent another letter on May 10, 2004, indicating the date of the scheduled PPD evaluation. This letter also stated that Mr. Gilbert's claim was closed as of the evaluation date, excepting the same criteria mentioned in the first letter.

Mr. Gilbert had the PPD evaluation on June 3, 2004. The PPD evaluation indicated that Mr. Gilbert had a nine percent PPD rating and that Mr. Gilbert required "maintenance care consisting of physician visits every three to four months to prescribe and monitor medications."

The insurer sent a third letter to Mr. Gilbert on June 18, 2004. This letter offered Mr. Gilbert PPD benefits and again stated that his claim was closed to further treatment. In this letter, the insurer did not mention any maintenance care.

On June 23, 2004, Mr. Gilbert administratively appealed the closure of his claim because it did not allow for the maintenance care recommended by his physicians. An appeals officer evaluated the evidence, determined that Mr. Gilbert had properly appealed from the June 18 PPD determination letter, and found that Mr. Gilbert was entitled to continuing maintenance care. The appeals officer then order the insurer to pay for Mr. Gilbert's medication refills for as long as the treating physician deemed it appropriate.

Flamingo Hilton's petition for judicial review was denied, and Flamingo Hilton appealed. Flamingo Hilton is challenging the appeals officer's jurisdiction over this case since Mr. Gilbert did not appeal from the April 28 letter first alleging to close his claim. Flamingo Hilton also challenges the appeals officer's determination that Mr. Gilbert is entitled to maintenance care.

¹ By Aubree Nielsen

Discussion

The court, like the district court, reviews an appeals officer's decision for an abuse of discretion. The court will affirm an appeals officer's factual determinations if substantial evidence supports the determinations.

The court concluded that the appeals officer properly exercised jurisdiction over the claim closure issue, despite Flamingo Hotel's argument that Mr. Gilbert had waived his right to appeal his claim's closure by failing to file an appeal based on the April 28 letter. NRS 616C.315(3) allows an appeal from an insurer's determination within seventy days from the determination letter's mailing date.

The April 28 letter expressly allowed Mr. Gilbert to receive previously authorized treatments and prescriptions. It is unclear from the record whether this authorization included the physicians April 22 recommendations, and therefore, it is also unclear whether Mr. Gilbert was aggrieved by the April 28 letter. Further, the insurer sent two additional letters during the appeal period, and each letter had a different claim closure date. Thus, Mr. Gilbert was entitled to rely on the latest letter. Furthermore, despite Mr. Gilbert not referencing the April 28 letter in his appeal, Mr. Gilbert administratively appealed the claim closure within seventy days of the April 28 letter. Thus, Mr. Gilbert's appeal was timely, and the appeals officer properly evaluated the appeal.

Flamingo Hotel also challenged the appeals officer's decision of maintenance care, arguing that the "indefinite" care is against the weight of the evidence and is an abuse of discretion. The court found that the record showed substantial evidence that the physician and the medical evidence indicated that Mr. Gilbert needed continued medication for his industrial injury.

Conclusion

Mr. Gilbert timely appealed his claim closure, and the record indicated substantial evidence the Mr. Gilbert required continued maintenance care. Thus, the court found the appeals officer properly considered the case, and the court affirmed the district court's order denying judicial review.