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Summary of Day v. Washoe County School District, 121 Nev. Adv. Op. 37

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Nevada Law Journal

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Recommended Citation

Geswein, Timothy J., "Summary of Day v. Washoe County School District, 121 Nev. Adv. Op. 37" (2005).
Nevada Supreme Court Summaries. 611.
<https://scholars.law.unlv.edu/nvscs/611>

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Day v. Washoe County School District, 121 Nev. Adv. Op. 37 (2005).¹
LABOR LAW – WORKERS’ COMPENSATION

Summary

The Nevada Supreme Court held that a prior determination that an injury is industrially related may not be reconsidered in determining primary causation under NRS 616C.390, the Nevada Industrial Insurance Act’s provision for claim reopening.

Disposition/Outcome

The Nevada Supreme Court holds that it is improper to reconsider the nature and causation of an industrial injury when the injured worker makes an application to reopen a closed workers’ compensation claim under NRS 616C.390.²

Factual and Procedural History

Appellant Alfred Day sustained a number of industrial injuries between 1986 and 1995. By 1995, doctors diagnosed Day with degenerative osteoarthritis in both hips and recommended bilateral hip-replacement surgery. The insurance administrator approved surgery on each hip; however, Day elected to forgo the second hip-replacement surgery until 1999, two years after the claim was closed. The appeals officer upheld the insurance administrator’s denial to reopen the claim.

Discussion

The parties did not dispute that Day’s hip condition had worsened since the claim closure in 1997 or that Day properly attached a physician’s certificate to his 1999 claim reopening application. The sole question before the appeals officer was whether the primary cause of Day’s change of circumstances was the injury for which the claim was originally made. In denying the claim, the appeals officer noted that the insurer’s one-time acceptance of the treatment does not obviate the statutory requirement on reopening, that the primary cause of the current need for treatment is an industrial injury.

¹ By Timothy J. Geswein

² NEV. REV. ST. § 616C.390 governs the reopening of industrial insurance claims and provides in pertinent part:

1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

(a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

(c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation.

The Nevada Supreme Court concluded that the appeals officer misinterpreted NRS 616C.390 to permit reconsideration of the original acceptance of Day's osteoarthritis as industrially related. While Day had the burden to satisfy NRS 616C.390's claim reopening requirements, the appeals officer was not permitted to consider medical opinions revisiting the propriety of the original conclusion that the osteoarthritis was industrially related, as that issue had been previously resolved.

The court ordered a new hearing solely to determine whether the primary cause of the worsening of Day's hip was the injury for which the claim was originally made. The court instructed the appeals officer to be mindful of fact that the hip condition had been originally accepted as industrially related.

Conclusion

The Nevada Supreme Court held that the appeals officer improperly reconsidered the nature of the original industrial injury upon a claim for reopening. The Court remanded the matter with instructions for the appeals officer to conduct a new hearing in accordance with the analysis set forward in the opinion.