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Recommended Citation

Oakley, Danielle, "Summary of *Seino v. Employers Insurance Co. of Nevada*, 121 Nev. Adv. Op. 17" (2005).
Nevada Supreme Court Summaries. 630.
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Seino v. Employers Insurance Co. of Nevada, 121 Nev. Adv. Op. 17 (2005)¹

ADMINISTRATIVE PROCEEDINGS—INDUSTRIAL INSURANCE

Summary

This case was an appeal from a district court order denying Plaintiff/Appellant's petition for judicial review in a workers' compensation case.

Disposition/Outcome

The Supreme Court of Nevada affirmed the district court's order.

Factual and Procedural History

In January 2000, Plaintiff/Appellant Sandra Seino ("Seino") alleged that chemicals burned her hands during her course of employment. In March 2000, Seino filed a claim for workers' compensation with Defendant/Respondent Employers Insurance Company of Nevada ("EICN").

On March 22, 2000, EICN sent a letter to Seino denying her claims. The letter instructed Seino that she had seventy days from the date of the letter to appeal the decision. Two days later, Seino mailed the requisite appeal form to the hearings division, as the letter instructed. However, the hearings division never received Seino's letter. On November 9, 2000, Seino faxed the appeal form to the hearings division.

After the hearings division received Seino's faxed appeal form, it held a hearing on Seino's claims. The hearing officer, however, dismissed Seino's claims as untimely under Nev. Rev. Stat. § 616C.315(3) because the hearings division did not receive the appeals form within seventy days.

Seino petitioned for judicial review in the district court, which the district court denied. Seino then appealed the district court's order.

Discussion

I. The Jurisdictional Limits of Nev. Rev. Stat. § 616C.315

Nev. Rev. Stat. § 616C.315 provides that "Any person who is subject to the jurisdiction of the hearing officers pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may request a hearing before a hearing officer of any matter within the hearing officer's authority . . . by filing a request for a hearing before a hearing officer. Such a request must include the information required pursuant to subsection 2 and must be filed *within 70 days* after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable."² Additionally, the Nevada Supreme

¹ By Danielle Oakley

² NEV. REV. STAT. 616C.315 (2004)(emphasis added).

Court has held, in *SIIS v. Partlow-Hursh*,³ that notice of appeal under the statute is filed when the hearings division receives the notice, not when the appellant mails the notice. The court also held in *Partlow-Hursh*, that the seventy-day time limit is mandatory and jurisdictional. Failure to file a notice of appeal within the time limit is only excused if the appellant did not receive a denial notice notifying the appellant of his or her appellate rights.

Seino argued, however, that the Court should revisit its holding in *Partlow-Hursh*. Specifically, Seino argued that notice of appeal under § 616C.315 should be considered filed when mailed, not when received. Seino cited Nevada Rule of Appellate Procedure 25(a) as authority, which provides that filings are timely when mailed, not when received by the court clerk.

The Court ruled that Nevada Rule of Appellate Procedure 25(a) is not analogous to the filing requirements of § 616C.315. Accordingly, the Court refused to overturn its decision in *Partlow-Hursh*, and found that Seino's filing was untimely because the hearings division received Seino's notice well after the seventy-day time limit had expired.

II. Unique Circumstances

The "unique circumstances" doctrine applies when "a party has performed an act which, if properly done, would postpone the deadline for filing his appeal and has received specific assurance by a judicial officer that this act has been properly done."⁴ Seino argued that the unique circumstances doctrine applied in her case because the denial letter she received from EICN stated that, by failing to file a notice of appeal within seventy days, Seino *may* forfeit her right to appeal. Seino suggested that the use of the word "may" rendered the notice provision inadequate. The Court disagreed. The Court further noted that Seino never received specific assurance from a judicial officer that she had filed her notice properly. Accordingly, the Court refused to apply the doctrine of unique circumstances.

III. Equitable Tolling

Seino argued that the time limit to file notice of appeal should be tolled under the doctrine of equitable tolling. The Court refused to do so, however, because the Court has never applied the doctrine to statutory time limits that are mandatory and jurisdictional.

Conclusion

The district court properly denied Seino's petition for judicial review because her notice of appeal was untimely and neither the doctrine of unique circumstances nor the doctrine of equitable tolling saved Seino's untimely appeal.

³ 101 Nev. 122, 125, 696 P.2d 462, 464 (1985).

⁴ *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 179 (1989).