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Summary of Anderson v. State, Emp't Sec. Div., 130 Nev. Adv. Op. 32

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Anderson v. State, Emp't Sec. Div., 130 Nev. Adv. Op. 32 (May 15, 2014)[1]

EMPLOYMENT LAW: UNEMPLOYMENT BENEFITS

Summary

The Court interpreted the meaning of the phrase "within 3 years after the initial period of disability begins" within NRS 612.344[2] for a worker with a recurring or degenerative condition.

Disposition

The phrase refers to the first in the series of potentially available benefits enumerated in NRS 612.344(2)—temporary total disability, temporary partial disability, and/or vocational rehabilitation—for each episode of compensated disability leave. Thus, the alternative-calculation option in NRS 612.344 renews when a temporarily disabled worker recovers and returns to work long enough to reestablish himself in the unemployment compensation system.

Factual and Procedural History

For an overview of the relevant unemployment compensation statutes see Part I(A).

Anderson injured his back while at work in 2004. He received workers compensation benefits for temporary total disability. After receiving surgery, Anderson returned to work, but had recurring problems several years later. He again received benefits from November 2008 to June 2010. Anderson had another surgery and was released to return to work, but filed for unemployment compensation because he could not find a job.

Anderson's claim was denied because he did not meet the technical requirements to qualify for worker's compensation. He had not earned wages in the first four of the last five calendar quarters preceding his application. Furthermore, the three year alternative-calculation option was not available because it expired in 2007.

Discussion

II.

A.

The Employment Security Division (ESD) argued that this was purely a case of factual questions, namely whether Anderson's 2004 injury to his back was the cause of his temporary total disability from 2004-2006 and 2008-2010. However, Anderson did not dispute those facts

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[2] This statue allows an individual who cannot find work after a period of temporary disability the option of using his work history for the 15 months preceding his disability leave to determine his unemployment compensation instead of, as is the norm, the 15 months preceding his application for unemployment compensation. To qualify for this option, the application must be filed "within 3 years after the initial period of disability begins and not later than the fourth calendar week of unemployment after. ... [t]he end of the period of temporary total disability or temporary partial disability [or the] date the person ceases to receive money for rehabilitative services, whichever occurs later." NEV. REV. STAT. 612.344(2) (2004).

and rather argued that by working full time from 2006 to 2008, he restored his eligibility to elect the optional base period under NRS 612.344.

B.

ESD argued that NRS 612.344 had a plain meaning: If the same original injury leads to two extended periods of temporary disability, the NRS 612.344(1) option only applies to the first. ESD emphasized the use of the word "initial" and argued that the inclusion of the word spoke to the plain meaning they prescribed. However, the court noted that ESD's interpretation read the phrase "period of" out of the statute. ESD's reading would allow an individual who suffered two different injuries in the same time frame as Anderson to use the alternative calculation option under NRS 612.344 while disallowing this same option for an individual who suffered the same injury twice.

The court disagreed with this interpretation and noted that the logic was difficult to follow. Instead, the court noted that Nevada law mandates that unemployment compensation statutes be liberally construed to protect workers who become involuntary unemployed.

C.

Furthermore, the court held that the phrase "period of disability" referred to "the duration of a type of disability benefit – not injury. The statute's use of 'whichever occurs later' confirms that NRS 612.344(2) is addressing a series of potential 'period of disability' types, with 'initial' modifying the first in the sequence.' Therefore, the court held that ESD's position was not supportable.

D.

After determining that "period of disability" referred to time off of work receiving a disability as opposed to an injury, the court next examined whether NRS 612.344(2) permitted a worker to have more than one "initial period of disability" over the course of a career. The court noted that the statute was ambiguous and analyzed the legislative history to resolve the ambiguity. The court noted that the 1993 amendments to NRS 612.344(2) were intended to expand it to reach temporary partial disability and rehabilitative services in addition to temporary total disability, not to restrict its use to the three year period following a worker's first disabling injury. The court further noted that nothing in the1993 amendments suggested a purpose of limiting the alternative calculation option to the first injury a worker sustains.

E.

The court next determined that public policy and common sense did not support ESD's reading of NRS 612.344(2). As the court stated, "it is difficult to fathom why a worker with a medical condition that recurs should be treated differently from one who is accident-prone and suffers multiple distinct injuries, especially since the law, presumably, encourages individuals to return to gainful employment if they are able."

Conclusion

So long as a disable claimant's work history establishes an alternate base period without having to go back more than 3 years to start the period, NRS 612.344 applies.