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Poremba v. S. Nev. Paving, 133 Nev. Adv. Op. 2 (Jan. 26, 2017) (en banc)

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CIVIL APPEAL: ADMINISTRATIVE AGENCY

Summary

The Court determined that (1) an administrative officer must first determine whether to reopen a worker's compensation benefits claim, pursuant only to the requirements of NRS 616C.390, before considering whether the insurer is entitled to reimbursement due to a third party settlement; and (2) that insurers may be entitled to reimbursement for funds an injured party receives in third party settlements that are also covered by workers' compensation, but are not entitled to reimbursement from the portion of the settlement designated for remedies outside the definition of "compensation" in NRS 616A.090, including pain and suffering and lost wages.

Background

In 2005, William Poremba sustained injuries related to a driving accident while working as a construction driver for Southern Nevada Paving. Poremba filed a workers' compensation claim that was accepted and eventually closed by Southern Nevada Paving through S&C Claims (S&C). S&C notified Poremba that he could reopen his claim if his condition worsened.

In 2009, Poremba settled a lawsuit with his employer and the other driver in the accident for \$63,500, of which \$34,631.51 went directly to health-care providers' liens. Poremba spent about \$14,000 more of the settlement money on medical expenses. The settlement agreement did not specify the way the funds of the agreement were to be allocated.

Poremba attempted to return to work, but was unable and instructed not to by his doctors. In 2013, S&C denied Poremba's request to reopen his claims. On appeal, the appeals officer granted S&C summary judgment after an evidentiary hearing wherein Poremba was denied the opportunity to present evidence regarding his changed circumstances. After the district court denied a petition for judicial review, Poremba appealed to the Supreme Court of Nevada.

Discussion

The administrative officer must make a finding pursuant to NRS 616C.390 before considering whether the insurer is entitled to any reimbursement

NRS 616C.390 outlines the sole requirements for reopening a worker's compensation claim. A claim shall be reopened if the application comes more than one year after the claim was closed, a change of circumstances warrants a change in compensation, the injury for which the original claim was made is the primary cause of the changed circumstances, and a certificate from a physician or chiropractor demonstrating changed circumstances accompanies the application.²

Here, Poremba waited over a year to apply to reopen his claim and had the relevant physician documentation. However, the appeals officer did not allow him to enter any other evidence about his changed circumstances. In denying Poremba's request to reopen his claim, the

¹ By Christopher Kelly.

² NEV. REV. STAT. § 616C.390(1) (2015).

officer erroneously considered whether Poremba spent some settlement funds on non-medical expenses, which is not part of the inquiry outlined by NRS 616C.390.³ Because of this error, the appeals officer made no findings of fact relating to Poremba's changed circumstances. Accordingly, the Court reversed and remanded to the district court with instructions to remand to the appeals officer for rehearing with instructions to consider whether Poremba's claim warrants reopening before considering whether S&C is entitled to reimbursement.

An insurer is not entitled to reimbursement from the portion of a third-party settlement that compensates an injured worker for anything outside the definition of compensation found in NRS 616A.090

Under Nevada law, insurers can claim an offset to payments to a claimant who also receives compensation from a related third-party lawsuit.⁴ "Compensation" is defined as "benefits for funerals, accident benefits and money for rehabilitative services."⁵ Under the statute, accident benefits include medical and hospital related costs.⁶

The Court concluded in *Chandler* that an insurer can withhold medical benefits while the injured party still has unspent funds from a third-party settlement.⁷ Contrary to S&C's assertions though, the issue here is the type of third-party claim that must be exhausted before the insurer must pay again, not the way in which the settlement funds are spent. The Court did not address the type of claim that must be exhausted or the way in which the claimant must exhaust the settlement in *Chandler*.⁸ Because a person can recover in tort for more than just medical expenses, the Court found that the NRS 616C.215 policy against double recovery should not apply to parts of settlements that do not include the "same elements" of a workers' compensation claim.⁹ It would be unjust to disallow claimants an opportunity for future workers' compensation benefits merely because they used an award for pain and suffering on something other than medical expenses.

Therefore, S&C may offset compensation on the portion of Poremba's settlement that was meant to go to medical expenses, but not for any other portion of his settlement that would extend beyond the definition of "compensation" under NRS 616A.090, such as lost wages. On remand, because Poremba's settlement makes no indication of how it should be allocated, the appeals officer will need to conduct an evidentiary hearing to determine the way in which the part of the settlement not going directly to medical liens was meant to be allocated.

The administrative officer must issue a decision containing detailed findings of fact and conclusions of law

If an administrative officer does not make factual findings and conclusions of law another court cannot properly review a case on appeal. Accordingly, administrative agencies are required

³ *Id.*

⁴ § 616C.215(2).

⁵ § 616A.090.

⁶ § 616A.035(1).

⁷ *Employers Insurance Co. of Nevada v. Chandler*, 117 Nev. 421, 426, 23 P.3d 255, 258 (2001).

⁸ *Id.*

⁹ Restatement (Second) of Torts § 924 (1979); *Tobin v. Department of Labor & Industries*, 187 P.3d 780, 783 (Wash. Ct. App. 2008).

to issue orders with factual findings and conclusions of law.¹⁰ Here, the appeals officer failed to make factual findings and conclusions of law in an order, but also precluded Poremba from even presenting evidence that was necessary to determine the validity of his claim. Therefore, the Court could not even review the facts of the case and was forced to reverse and remand to the appeals officer for a full administrative hearing where the officer creates an order with detailed findings of fact and conclusions of law.

Conclusion

The appeals officer did not allow Poremba to present evidence about the changed circumstances of his physical condition. Accordingly, the Court, sitting en banc,¹¹ reversed and remanded the case with instructions for the district court to remand for a rehearing with the appeals officer for fact finding. Also, in evaluating whether an insurer is entitled to reimbursement or to continue withholding medical expenses due to a third-party settlement, the appeals officer must consider the amount of the settlement allocated for medical expenses. Some of a third-party settlement could be for other things, like pain and suffering, that a claimant can rightfully spend on things other than medical expenses without forfeiting the right to continued workers' compensation. The Court instructed the rehearing officer to make findings of fact regarding the reopening requirements under NRS 616A.390 as well as the way the settlement funds were meant to be allocated to Poremba.

¹⁰ NEV. REV. STAT. § 233B.125 (2015).

¹¹ On April 7, 2016, a panel of the Court similarly reversed and remanded with instruction for the district court to remand to the appeals officer. *Poremba v. S. Nev. Paving*; and *S&C Claims Servs. Inc.*, 132 Nev. Ad. Op. 24 (April 7, 2016).