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City of Reno v. Joy Yturbide, 135 Nev. Adv. Op. 14 (May 2, 2019)

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Employment Law: Worker's Compensation

Summary

The Court held that a compensation insurer may not reduce the 25 percent limit on lump-sum payments for an employee's permanent disability award on different subsequent injuries. The court affirmed the district court's denial of appellants' petition for judicial review.

Background

Respondent Jody Yturbide was a public safety dispatcher for City of Reno ("City"). She received three separate permanent partial disability (PPD) awards for three separate injuries: a 5-percent whole person impairment ("WPI") in 2008, 2 percent WPI in 2011, and 33 percent WPI in 2014.

The City objected to her final 33 percent WPI, arguing that a statutory cap of 25 percent on lump-sum payments² and the fact that Yturbide's two previous payments totaled 7 percent WPI enabled the City to subtract Yturbide's previous lump-sum PPD payments from the 25 percent limit, she was entitled to an 18 percent lump-sum payment for the 2014 injury; and the remaining 15 percent would be paid in installments.

Yturbide appealed, requesting a hearing before the Department of Administration Hearings Division. The hearing officer found that Yturbide was entitled to a 25 percent lump-sum payment with the remaining 8 percent to be paid in installments.

The City then appealed, but the appeals officer affirmed the previous decision. The City petitioned the district court for judicial review of the appeals officer's decision, but the district court affirmed the decision. The City then petitioned this Court, and this decision followed.

Discussion

The Court reviewed the construction of NAC 616C.498 de novo and held that where an employee suffers a subsequent industrial injury and obtains a subsequent PPD award, the statute does not permit a worker's compensation insurer to use previous PPD awards paid in a lump sum to reduce the 25 percent lump-sum-payment limit.

The issue of the construction of NAC 616C.498 was reviewed de novo.³ Where the language of the statute is plain and unambiguous, courts should not alter the language to accomplish a purpose not on the face of the statute or apparent from permissible extrinsic aids.⁴

Nevertheless, the City argued, based on the fact that NAC 616C.498 does not prohibit an insurer from deducting previous PPD awards when those awards were paid in a lump sum, that insurers are permitted to do so. The Court rejected this argument, reasoning that the fact that NAC 616C.498 is silent on whether an insurer may deduct previous PPD awards when those awards

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² NRS 616C.495(1)(d); *see also* NAC 616c.498.

³ *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 329, 849 P.2d 267, 269 (1993).

⁴ *Id.* at 330

were paid in a lump sum “means that the regulation is not pertinent to the issue whatsoever.” In fact, the language of NAC 616C.498 suggests that the 25 percent limit applies on a disability-by-disability basis.⁵

The Court also rejected the argument that NRS 616C.495(1)(e) or NRS 616C.490(9) require that NAC 616C.498 permits an insurer to deduct previous PPD awards when computing the amount of a lump-sum payment for subsequent PPD award, holding that NRS 616C.495(1)(e) only applies to employees with multiple injuries creating a combined WPI rating above 100 percent. The Court also noted that the City failed to identify legislative history to suggest an alternative legislative purpose.

Furthermore, the City relied on *Eads v. Sate Industrial Insurance System*, but the Court held that the instant case is distinguishable because *Eads* concerned an employee who reopened his claim because the same injury for which he previously received a PPD award required additional treatment, whereas Yturbide is seeking compensation for a different subsequent injury.⁶

Finally, the City raised some public-policy arguments, but the Court considered those arguments better directed to the Legislature.

Conclusion

The Court affirmed that Yturbide is entitled to a lump-sum payment for the first 25 percent of her most recent WPI rating and PPD award, with the remaining 8 percent to be paid in installments, and affirmed the district court’s denial of the City’s petition for judicial review.

⁵ *Id.*

⁶ *Eads v. State Indus. Ins. System*, 109 Nev. 733, 857 P.2d 13 (1993).