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Demaranville v. Cannon Cochran Mgmt. Serv.'s, Inc., 135 Nev. Adv. Op. 35 (Sept. 5, 2019)

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CIVIL APPEAL: ADMINISTRATIVE AGENCY – GENERAL

Summary

The Court determined that the last injurious exposure rule determines the liability for occupational disease which is conclusively presumed to have resulted from past employment. Additionally, the Court held that death benefits are based on the employee's wages earned while working for the employer to which the occupational disease is causally connected.

Background

Daniel DeMaranville worked as a police officer for the City of Reno from 1969 to 1990. After retiring, he worked as a private security officer. Daniel died from cardiac arrest due to heart disease following surgery on August 5, 2012. Employers Insurance Company of Nevada ("EICON") insured the City's occupational disease claims through 2002, after which time the City self-insured its claims.

Laura DeMaranville was denied her husband's death benefits by the City and EICON. An appeals officer reversed, finding that the City was liable for the benefits since heart disease was a compensable occupational disease for police officers under NRS 617.457 and the amount of the benefits was to be based on Daniel's income from his private employer at the time of his death.² The district court affirmed the appeals officer's decision as to the City's liability but reversed as to the benefit amount, holding that it was to be based on Daniel's income from the City at the time of his death, which was zero. This appeal followed.

Discussion

Substantial evidence supports the finding that Daniel died from heart disease

NRS 617.430(1) provides that when an employee dies from an occupational disease arising out of and in the course of employment, his dependents are entitled to compensation. Per NRS 617.457(1) (2011) heart disease is conclusively presumed to have arisen out of and in the course of employment of a person who for five years or more has been employed full-time as a police officer in Nevada.³

After surgery, Daniel experienced low blood pressure and an elevated heart rate. His cardiac enzymes were determined to be elevated, consistent with heart damage. He suffered cardiac arrest and could not be resuscitated. His cause of death was certified as cardiac arrest caused by heart disease.

¹ By Anya Lester.

² NEV. REV. STAT. § 617.457 (2017).

³ NEV. REV. STAT. § 617.430(1) (2017); NEV. REV. STAT. § 617.457(1) (2011).

The last injurious exposure rule applies in determining the liability for occupational disease claims for conclusively presumed disabilities.

The last injurious exposure rule places “full liability upon the carrier covering the risk at the time of the most recent injury that bears a causal relation to the disability.”⁴ The Court has previously applied this rule in determining liability where a claimant had successive employers that each could have been liable for the claim.⁵ The Court concluded that since Daniel’s occupational disease was conclusively presumed to have arisen out of his employment as a police officer pursuant to NRS 617.457(1) (2011) and was not shown to have arisen from later employment that this rule applies here.⁶

NRS 617.410 provides that compensation for an occupational disease claim must be paid by the insurer.⁷ Since Daniel’s disease is conclusively presumed to have arisen out of and in the course of his employment with the City, the last injurious exposure rule provides that liability for his death benefits falls on the City’s insurer at the time that Daniel worked for the City. In 1990 when Daniel had his last injurious exposure to the risk causally connected to his disease, EICON was the City’s insurer and is therefore liable for the death benefits.

The occupational disease death benefit amount is based on the wages earned during the period causally connected to the occupational disease

NRS Chapter 617 does not provide a method for determining the amount of the death benefit. Per NRS 616.505(1)-(2) a surviving spouse may recover 66 2/3 percent of the decedent’s monthly wage.⁸ This amount is determined pursuant to NAC 616C.435(1)(8) by considering the employee’s earnings from a period of twelve weeks “ending on the date on which the accident or disease occurred, or the last day of the payroll period preceding the accident or disease if this period is representative of the average monthly wage.”⁹

Since the date that a disease “occurred” is not as discernable as the date of an accident or injury, the Court looked to the legislative intent to determine the calculation of the benefit. Since the NRS provides that dependents are to receive death benefits, the Court determined that basing Daniel’s death benefits on his wages from the City at the time of his death, which were zero, would nullify any claim and thus be inconsistent with legislative intent. The Court concluded that the legislative intent supported that the death benefit should be related to the wage earned at the time the occupational disease causally connected to the disability occurred. Therefore, to determine benefits, Daniel’s 1990 wages from the city should be relied upon.

EICON has not shown a due process violation

EICON claimed that the Court violated its right to due process in limiting its participation to that of a respondent. Since EICON had notice and an opportunity to be heard on Daniel’s death benefit claim, the Court held that a due process violation was not shown to have occurred.

⁴ State Indus. Ins. Sys. V. Jesch, 101 Nev. 690, 696, 709 P.2d 172, 176 (1985).

⁵ Emp’rs Ins. Co. of Nev. V. Daniels, 122 Nev. 1009, 1016–17, 145 P.3d 1024, 1029 (2006).

⁶ NEV. REV. STAT. § 617.457(1) (2011).

⁷ NEV. REV. STAT. § 617.410 (2017).

⁸ NEV. REV. STAT. § 616C.505(1)-(2) (2017); NEV. REV. STAT. ch. 617 (2017).

⁹ NEV. ADMIN. CODE § 616C.435(1), (8) (2016).

Conclusion

The Court determined that substantial evidence supported the conclusion that Daniel died from compensable occupational heart disease and affirmed the district court's conclusion supporting the appeals officer's finding. The Court reversed the district court's conclusion that the City was the liable insurer. The Court also reversed the district court's conclusion that the death benefit amount should be based on Daniel's 2012 wages rather than his 1990 wages from the city.