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White v. State of Nevada, 135 Nev. Adv. Op. 67 (Dec. 26, 2019)

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WORKERS' COMPENSATION

Summary

The Court affirmed the district court's denial of judicial review from a prisoner who challenged the amount of workers compensation he received after release for an injury sustained during incarceration. The Court determined that under NRS 616B.028² and NRS 616C.500 a person injured in an industrial accident while incarcerated receives workers' compensation benefits calculated on the average monthly wage the prisoner actually received on the date of the injury, and upon release is not entitled to have the benefits recalculated at the minimum wage guaranteed under the Nevada Constitution.

Background

While incarcerated in the Nevada Department of Corrections (NDOC) in December 2015, Darrell White injured his finger working for the Nevada Division of Forestry through an NDOC work program. White filed a workers' compensation claim which the Division of Forestry's insurance carrier accepted.

White was released from NDOC in July 2016 and was subsequently declared unable to work for 144 days due to his injured finger. The Division of Forestry's insurance carrier calculated White's total wages based on the average monthly wage he received during his incarceration. White argued that NRS 616B.028³ only controls the rate of compensation while a person is incarcerated, and therefore upon release his wage should be calculated at the Nevada minimum wage that was in effect at the time of his injury.

The appeals officer affirmed the insurance carrier's calculation and denied White's appeal. The district court denied White's petition for judicial review of the appeals officer's decision. White subsequently appealed to the Nevada Supreme Court.

Discussion

Under NRS 616B.028(2) and NRS 616C.500(2) the amount of compensation owed to a prisoner must be determined as of the date of the accident.

The only argument that White raised was that the calculation based on his wage while incarcerated was unfair because he is no longer incarcerated, therefore it should be recalculated to reflect the minimum wage in Nevada. However, the controlling factor under NRS 616B.028(2) and NRS 616C.500(2) is date of the injury and the wages earned at that time. Since White was incarcerated when the injury occurred, the calculation of his wages based on that date was correct. Nothing in the statutes permit the insurance carrier or the appeals officer to ignore the actual wage received by White at the time of his injury. A determination that the calculation

¹ By Katrina Fadda.

² NEV. REV. STAT. §§ 616B.028, 616C.500 (2013).

³ NEV. REV. STAT. § 616B.028 (2013).

was unfair would require the Court to declare the wage White earned while incarcerated was unconstitutional, and the Court was unwilling to resolve that question on this issue.

Conclusion

The calculation of White's wages based on the date of the injury he sustained during his incarceration was correct. The Court affirmed the district court's order denying petition for judicial review of the appeals officer's decision.

SOCIAL MEDIA BLURB:

Court affirms workers' compensation benefits received after prisoner released that were calculated based on average wage earned on the date of injury sustained during incarceration under NRS 616B.028(2) and 616C.500(2)