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Julia Standish

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## UNDOCUMENTED IMMIGRANT EMPLOYEES WHO ARE INJURED WHILE WORKING FOR A NEVADA EMPLOYER ARE ELIGIBLE FOR MONETARY DISABILITY BENEFITS

### **Summary**

In an opinion drafted by Justice Stiglich, the Nevada Supreme Court considered whether undocumented immigrants who are injured while working for a Nevada employer are eligible for monetary disability benefits. The Court unanimously concluded that an undocumented worker suffering trauma due to a workplace accident is entitled to permanent total disability, despite a third-party insurance administrator's insistence that his inability to work was due solely to his immigration status.

### **Background**

In 2014, Respondent Manuel Ibanez, an undocumented Nevanadan, was severely injured while working for High Point Construction as a carpenter when a falling two-by-four struck him in the head, shoulder and back. His treatment included multiple surgeries over the next several years, and he continued to suffer both physical pain and mental trauma.

Mr. Ibanez applied for permanent total disability (PTD) status. However, his employer's insurance administrator, Associated Risk Management (ARM), denied the request, finding that his disability was only temporary and that he would be employable if he was eligible to work legally in the United States. Ibanez sought review of ARM's determination pursuant to NRS 616C.32.<sup>2</sup> A Nevada Division of Industrial Relations hearing officer affirmed the denial, but an appeals officer reversed the decision based on the "odd-lot doctrine." This established doctrine allows PTD status when a worker, "while not altogether incapacitated for work, [is] so handicapped that they will not be employed regularly in any well-known branch of the labor market."<sup>3</sup> Ultimately, the appeals officer's decision in favor of PTD status for Ibanez relied on Ibanez's well-documented physical impairment traceable to the 2014 accident and subsequent surgeries. The appeals officer found Ibanez's immigration status was irrelevant.

A district court declined to review the decision and ARM appealed to the Nevada Supreme Court arguing a denial of coverage under the federal Immigration Reform and Control Act (IRCA).

### **Discussion**

The Court's assertion that IRCA does not preempt an award of monetary benefits to undocumented immigrants relies primarily on the reasoning re-affirmed in the Court's previous decision, *Tarango v. State Indus. Ins. Sys.*<sup>4</sup> Here, the Court examined NRS 616A.105(1) emphasizing that Nevada's industrial insurance system covers "every person in the service of an employer. . . whether lawfully or unlawfully employed," including "[a]liens."<sup>5</sup> Therefore, the Court reaffirmed their interpretation in *Tarango* that the plain meaning of the statute lends to the

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<sup>1</sup> By Julia Standish.

<sup>2</sup> NEV. REV. STAT. § 616C.320 (2005).

<sup>3</sup> *Nev. Indus. Comm'n v. Hildebrand*, 100 Nev. 47, 51, 675 P.2d 401, 404 (1984) (quoting 2 A. Larson, *The Law of Workmen's Compensation*, § 57.51 (1981)); see NEV. REV. STAT. § 616C.435(2) (2005).

<sup>4</sup> *Tarango v. State Indus. Ins. Sys.*, 117 Nev. 444, 25 P.3d 175 (2000).

<sup>5</sup> *Id.*; NEV. REV. STAT. § 616A.105(1) (2005).

conclusion that "Nevada's workers compensation laws apply to all injured workers within the state, regardless of immigration status."<sup>6</sup>

Additionally, the Court explained that although federal law positively prohibits any employer from knowingly employing an undocumented immigration, IRCA says nothing about paying an undocumented alien benefits that compensate for an injury. Therefore, there is no conflict with federal law when an insurer pays compensatory benefits to an undocumented immigrant.

### **Conclusion**

The Court concluded that undocumented immigrants are not precluded from receiving disability benefits under Nevada's workers' compensation laws. Additionally, IRCA does not preempt Nevada law because although federal law prohibits employers from knowingly employing an undocumented immigrant, it does not prohibit insurers from compensating undocumented immigrants for injuries they sustain while working. Therefore, the appeals officer's decision to grant Ibanez PTD status was based on substantial evidence.

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<sup>6</sup> Tarango, 117 Nev. at 448, 25 P.3d at 178.