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City of Henderson v. Wolfgram, 137 Nev. Adv. Op. 71 (December 23, 2021)¹

EMPLOYMENT LAW: OVERTIME’S PLACE IN FULL WAGE-BASED NEVADA STATUTES

Summary

This is an appeal from a district court order denying a petition for judicial review in a workers’ compensation matter, arising from a firefighter requesting to reopen a workers compensation claim 2 years after the claim was closed after receiving medical advice that the injuries may be recurring. The question considered is whether the record supports a finding that the employee’s “injury has lessened his ability to work.” The standard for overtime in full wages claims, adopted in *NRS 616C.400.*, requires that a claimant must seek to reopen a claim “within 1 year after the date on which the claim was closed if... [t]he claimant did not meet the minimum duration of incapacity as set forth in NRS 616C.400 as a result of the injury.”²

The court concluded that the Legislature intended that full wages noted in NRS 616C.400(1) includes overtime payments. The court further affirmed the district court’s decision to deny judicial review of this matter.

Procedural History and Facts

Prior to January 2015, Brian Wolfgram had been working for the City of Henderson as a firefighter. During this time period, Wolfgram filed a workers’ compensation claim regarding injuries for his hands and elbows. The City, by and through its insurer, CCMSI, accepted Wolfgram’s claim, and Wolfgram continued to be paid his normal base salary. Subsequently, Wolfgram sought no additional benefits and his workers’ compensation claim was officially closed on January 26, 2015. However, on February 6, 2017, Wolfgram requested to reopen his

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² NRS 616C.400.

claim after receiving medical advice that his hand and elbow injuries could be recurring. This request was subsequently denied. Wolfgram appealed this decision and the appeals officer found that Wolfgram's inability to earn overtime while on light duty meant that he was ineligible from earning full wages under NRS 616C.400(1). The appeals officer acknowledged that NRS 616C.390(5) did permit Wolfgram to apply to reopen the claim a year after it had closed due to "lifetime reopening rights." Nevertheless, Wolfgram's request was denied due to insufficient supporting medical evidence. The City then petitioned for judicial review of the officer's finding that Wolfgram had not earned his full wages. Judicial review was denied by the district court after a hearing concluded that Nevada state law provided support for the appeals officer's decision, which is at issue in this appeal.

Discussion

Statutory interpretation of "full wages" is meant to include overtime

The Court begins their analysis by reviewing administrative agency decisions "for clear error or an arbitrary and capricious abuse of discretion" and defer to an agency's findings of fact and "fact-based conclusions of law . . . if they are supported by substantial evidence."³ The court states that "substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion"⁴ in qualifying the legal question as a de novo case.⁵

The City primarily argues that the appeals officer erred in concluding Wolfgram did not receive his full wages because the entirety of his base pay was received. The City also claimed that overtime is voluntary and Wolfgram failed to make a claim for lost wages, specifically. However, Wolfgram responded that the appeals officer's decision is a correct statement of the

³ Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 362 (2008).

⁴ *Id.* at 362; *See also* NRS 233B. 135(3)-(4) (defining substantial evidence and discussing judicial review of agency decisions).

⁵ City of N. Las Vegas v. Warburton, 127 Nev. 682, 686 (2011).

law and supported by substantial evidence and he further asserts that it should not matter if overtime was voluntary when the record shows that Wolfgram regularly worked overtime immediately before the injury. NRS 616C.390 is the statutory authority here, addressing the reopening of closed workers' compensation claims. The statute provides that a claimant must seek to reopen a claim “within 1 year after the date on which the claim was closed if...[t]he claimant did not meet the minimum duration of incapacity as set forth in NRS 616C.400 as a result of the injury.”⁶

Both parties presented reasonable arguments as to whether “full wages” includes the ability to earn overtime, which resulted in the court concluding that the statute is ambiguous in this respect.⁷ The court recognized that “[F]ull wages” is not defined in the workers’ compensation statutes or in the Nevada Administrative Code, and that the phrase predates any available legislative history. In fact, the holding declares that to conclude that “full wages” as used in NRS 616C.400(1) is always limited to the employee's base pay would therefore be contrary to how “wages” is used elsewhere in the statutory scheme, leading to an absurd result. The court then held that “full wages” as used in NRS 616C.400(1) can include overtime pay. Despite overtime being voluntary, the City does not dispute that it precluded Wolfgram from working overtime while he was on light duty due to his injury. More so, evidence in the record shows that, in the 12 weeks preceding his industrial injury, Wolfgram worked 96 hours of overtime, making up approximately 15 percent of his pay in that time period. The court found this to suffice as substantial evidence that supported the appeals officer’s conclusion that Wolfgram regularly worked overtime preceding his injuries, finding that he was in fact

⁶ NRS 616C.390.

⁷ See *Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 225 (2001) (holding that a statute is ambiguous if it “is susceptible to more than one natural or honest interpretation”).

incapacitated from earning his full wages. Thereafter, the court asked whether the record supports a finding that the employee's "injury has lessened his ability to work"⁸ Accordingly, the appeals officer did not err in concluding that Wolfgram had lifetime reopening rights for his claim.

Conclusion

Justice Hardesty wrote an opinion affirming the district court's order denying the petition for judicial review, concluding that the Legislature intended that full wages noted in NRS 616C.400(1) includes overtime payments. Justices Gibbons and Stiglich joined in concurrence. Therefore, the Court concluded that the district court did not err in denying the petition for judicial review.

⁸ Phipps v. Campbell, Wyant & Cannon Foundry, Div. of Textron, Inc., 197 N.W.2d 297, 305-06 (Mich. Ct. App. 1972) (holding, under a similar statute, that an employee did not earn full wages when his average daily wage decreased during the period of incapacitation).