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WORKER’S COMPENSATION: DENIAL OF COVERAGE FOR A SPECIFIC BODY PART
MUST BE MADE EXPLICITLY IN WRITING

Summary

In order to deny a claim for coverage for a specific body part under a worker’s compensation policy, the denial must be made in writing, specifying that that body part is denied. A finding that an injury to a specific body part was impliedly denied coverage under a worker’s compensation claim because it wasn’t listed among the specifically approved body parts violates NRS 616C.065 and NRS 616C.390.

Background

This case involves Brett Gilman, an English teacher for Clark County School District (“CCSD”). Gilman was injured on the job when he tried to stop a student who was fleeing from school administrators. Soon after, Gilman requested workers’ compensation from CCSD’s industrial insurer, Sierra Nevada Administrators (“Sierra”). He requested compensation for injuries relating to his neck and back. Days later, Gilman was diagnosed with cervical strain and thoracic sprain, but no mention was made of an injury to his lumbar spine. Sierra informed Gilman in a notice of claim acceptance that it would accept his insurance claim for “Cervical Strain (Only) [and] Thoracic Sprain (Only).” There was no mention of the lumbar spine in the letter. A few months later, Sierra notified Gilman that all benefits had been paid and his claim was being closed. Gilman did not appeal, and his claim was closed.

Soon after his claim closed, Gilman began experiencing lumbar pain. He received an X-ray of his spine, which showed that he had degenerative disc disease. Gilman requested that his claim be reopened to cover the treatment for his lumbar spine. Sierra denied Gilman’s request to reopen the claim because it wasn’t a body part covered in the acceptance letter. Gilman appealed to a hearing officer. The hearing officer affirmed Sierra’s decision to deny Gilman’s request and found that his worker’s compensation claim was only accepted for cervical strain and thoracic sprain, therefore impliedly rejecting any lumbar injury claims. Gilman further appealed the hearing officer’s decision. The appeals officer found that Gilman did not comply with the requirements to reopen the case because the lumbar was never an accepted body part. This appeal followed.

Discussion

The Plain Language of NRS 616C.065(7) Requires That a Denial of a Claim for a Part of the Body Must Be Made Explicitly.

The issue addressed by the Court was whether the appeals officer misapplied NRS 616C.065(7) in finding that the lumbar spine was not within the scope of Gilman’s accepted claim and therefore erred in denying Gilman’s request to reopen his claim. Reviewing the construction of the statute *de novo*, the Court first looked to the plain text to determine its meaning. Here, NRS 616C.065(7) states that the “failure of the insurer to indicate the acceptance or denial of a claim for a part of the body or condition does not constitute a denial or acceptance

¹ By Ben Reber.

thereof.” Rather, the acceptance or denial must be in writing.² The Court found that the plain language of these statutes places the burden on Sierra to expressly accept or deny coverage for a specific body part in writing. The Court further found that failing to give meaning to the plain language of 616C.065(7) would frustrate the purpose of NRS 616C.390.

Here, Sierra’s letter merely stated, “Cervical Strain (Only), Thoracic Sprain (Only).” The qualifier of “only” in Sierra’s letter is not sufficient. The Court points out that “only” may just as reasonably be modifying the term “cervical” as it may be modifying the term “strain.” Therefore, the Court found that Sierra neither accepted nor denied coverage for treatment to the lumbar spine. The Court held that the appeals officer’s decision that Sierra implicitly denied coverage for the body part was incorrect. Denial of coverage for the body part must be explicitly indicated in writing to satisfy the plain meaning of NRS 616C.065(7) and the requirements of NRS 616C.065(5). The Court further concluded that since Sierra had not yet denied coverage for Gilman’s lumbar spine, it would be illogical to require Gilman to appeal.

The Court also discussed that the legislative history of NRS 616C.065(7) supports the reopening of a claim to obtain treatment for a condition which has not been expressly denied by the insurer, although the Court recognized that such analysis was unnecessary because the plain language of the statute was sufficient to support its ruling.

Conclusion

Because Sierra’s letter did not expressly deny coverage for Gilman’s lumbar spine, no determination had been made by Sierra regarding coverage for Gilman’s lumbar injuries and it was in error for the appeals officer to deny Gilman’s request to reopen for a failure to appeal. Implied denials are not sufficient to constitute a denial. The Court reversed and remanded the matter to the district court with instructions to remand the matter to the appeals officer.

² See NEV. REV. STAT. § 616C.065(5) (2021).