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Rosa Olvera v. Wynn Las Vegas; and Sedgwick CMS, 139 Nev. Adv. Op. 41 (Sept. 28, 2023)¹
IN ORDER TO REOPEN A CLAIM FOR MULTIPLE BODY PARTS, A CLAIMANT NEEDS
TO PROVE THAT EACH OF THOSE BODY PARTS EXPERIENCED A CHANGE IN
CIRCUMSTANCES.

Summary

NRS 616C.390 allows for workers' compensation claims to be reopened if there is a change of circumstance related to the injury that the claimant can demonstrate by a preponderance of the evidence.² This Opinion clarifies that, if there were multiple body parts implicated in the injury, then a claim needs to be reopened only for the body parts that the claimant has demonstrated a change in circumstances.

Background

Rosa Olvera (appellant), an employee of Wynn Las Vegas, was injured in an industrial accident in September 2013 because of a fall that occurred after the door handle broke on a walk-in refrigerator. Multiple body parts were injured, including injuries to her head (concussion), scalp, back (lumbar spine), and hip. After a few months of treatment, a medical professional found that Olvera had suffered a six-percent whole-person impairment for her lumbar spine injury and a three-percent whole-person impairment related to her central nervous system. In 2015, Olvera accepted a nine-percent permanent partial disability (PPD) award.

As time went on, Olvera's back continued to worsen. In 2020 she obtained a diagnosis from a medical professional that her back injuries had worsened since the claim closure in 2015. After an initial denial and appeal, Olvera's claim was reopened in September 2021 after an appeals officer found that under NRS 616C.390(1)(a) Olvera had demonstrated a change in circumstance related to her lumbar spine. However, Olvera believes that her case should be reopened for all her injuries related to her 2013 accident. This appeal followed.

Discussion

Standard of Review

Questions of law, which include an administrative officer's construction of statutes, are reviewed by the Court of Appeals de novo. Administrative agency's factual findings are reviewed for "clear error or an arbitrary abuse of discretion."³ When interpreting statutes, the court will attempt to use the plain meaning of the statute in a way that avoids unreasonable results, and will consider the statute's multiple legislative provisions as a whole.

NRS 616.390(1) does not require reopening a claim for all of the body parts accepted in the original claim

Appellant claims that NRS 616C.390(1) requires that a claim be reopened for all originally accepted body parts. The court quotes the entirety of the statute and concludes that Olvera's claim "is belied by the plain language of the statute, as nowhere does the provision

¹ By Benjamin Robinson.

² NEV. REV. STAT. § 616C.390(1)(a) (2022) ("A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant").

³ *Olvera v. Wynn Las Vegas*, 139 Nev. Adv. Op. 41 1, 4-5 (Nev. Ct. App. 2023).

require a claim to be reopened for coverage of all body parts accepted in the original claim where there has been not change in circumstances as to those body parts.”⁴

Olvera failed to demonstrate by a preponderance of the evidence that her claim should be reopened as to body parts other than the lumbar spine

Because the medical record included only information on the lumbar spine, the appellant did not demonstrate by a preponderance of evidence that other body parts experienced a change of circumstance that would justify reopening a claim for them. Typically, such evidence is given by a testifying physician and by the medical records that they provide.

Conclusion

The Court of Appeals found that NRS 616C.390(1)(a) allows a claimant to reopen a claim only for a body part for which they demonstrated, by a preponderance of the evidence, that a change in circumstance warrants the claim being reopened. The court highlighted that in cases where multiple body parts were injured, the claimant needs to prove that each body part experienced a change in circumstance to reopen the claim for that body part. The court affirmed the appeals officer’s original judgment that the claim should only be reopened for the lumbar spine.

⁴ *Id.* at 5-6.