

**No. 62468
IN THE
SUPREME COURT FOR THE STATE OF NEVADA**

SUSAN REEVES,

Appellant,

V.

DIVISION OF INDUSTRIAL RELATIONS; AND NEVADA DEPARTMENT
OF ADMINISTRATION,

Respondents.

Electronically Filed
Aug 21 2014 08:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S REPLY BRIEF

Appeal from the Eighth Judicial District Court
Case No. A644791 (Dept. 4)

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TABLE OF CONTENTS

I. ARGUMENT1-5

 A. SUMMARY OF THE ISSUES RAISED & THE RELIEF REQUESTED BY APPELLANT REEVES1

 B. RESPONDENTS DO NOT DISPUTE THAT A STAY IS APPROPRIATE 2, 3

 C. THE ADMINISTRATIVE AND DISTRICT COURTS' FAILURE TO CONSIDER THE UNFAIR PROCESS THAT APPELLANT REEVES SUFFERED IS ABUSE OF DISCRETION3, 4, 5, 6

II. CONCLUSION6, 7

III. ATTORNEY'S CERTIFICATE PER NRCP 28.28, 9

IV. CERTIFICATE OF SERVICE 10, 11

TABLE OF AUTHORITIES

Cases

Reeves vs. Bally's Grand Hotel & Casino, Nevada Supreme Court
Case No. 62981 (filed April 11, 2013).....4, 5, 10

Patterson v. State, 129 Nev. Adv. Op. 17, 298 P.3d 433, 439 (Nev. 2013).....7

Willner v. Committee on Character and Fitness,
373 U.S. 96, 83 S.Ct. 1175 (1963).....9

Statutes

NRS 616D.120..... 4, 5, 9

NRS 616D.3306

Rules

NRAP 28(e)(1) 11

NRAP 32(a)(4) 11

NRAP 32(a)(5) 11

NRAP 32(a)(6) 11

NRAP 32(a)(7) 11

NRAP 32(a)(7)(C)..... 11

I. ARGUMENT

A. SUMMARY OF THE ISSUES RAISED & THE RELIEF REQUESTED BY APPELLANT REEVES

Appellant Reeves advanced the following two issues on appeal:

1. Whether Appellant Reeves is entitled to a benefit penalty pursuant to NRS 616D.120?

2. Alternatively, whether the administrative process was so unfair that it tainted the substantive treatment and disposition of Appellant Reeves' worker's compensation claim so that this Court should vacate all administrative determinations below and issue a remand for corrective, fair proceedings?

Upon those issues, Appellant Reeves requested the following relief from this Honorable Court:

1. To STAY a determination of whether the DIR improperly denied her a benefit penalty under NRS 616D.120 because her claim had been closed until the Court resolves the issue of whether Appellant Reeves' claim was properly closed in the matter captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013).

2. To VACATE the administrative determinations below because they were the product of an unfair and unjust process, tainted by fraudulent deception and misrepresentations, which prejudiced Appellant Reeve's substantive rights.

B. RESPONDENTS DO NOT DISPUTE THAT A STAY IS APPROPRIATE

In her Opening Brief, Appellant Reeves demonstrated that the issue of whether she is entitled to a benefit penalty under NRS 616D.120 depends on a determination of whether her worker's compensation claim was properly terminated. Thus, Appellant Reeves requested this Court to STAY these proceedings until it first determines the issue whether her worker's compensation claim was properly terminated in the separate appeal captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013). That was the sum of her relief. Respondents do not dispute that a STAY is appropriate or that this Court should first make the requested determination in Case No. 62981. In fact, Respondents' arguments confirm that STAY and determination of Case. No. 62981 is necessary.

For example, Respondents mainly argue that the decision to deny Appellant Reeves NRS 616D.120 benefit penalty was appropriate because it was supported by evidence that her worker's compensation claim was terminated, effectively trying to bypass a the necessary, prerequisite determination in Case No. 62981. See *CCMSI 07/21/014 Answering Brief* at pp. 14-15; *Department of Industrial Relation's 07/22/14 Joinder To CCMSI's Answering Brief* at pp. 6-7.¹ The Court should not allow such procedural gymnastics. Appellant Reeves has already been

¹ Ironically,

victimized by an unfair process below and this Court should proceed in an orderly determination of Case No. 62981, as Appellant Reeves has requested.

C. THE ADMINISTRATIVE AND DISTRICT COURTS' FAILURE TO CONSIDER THE UNFAIR PROCESS THAT APPELLANT REEVES SUFFERED IS ABUSE OF DISCRETION

Respondents argue that nothing nefarious or unfair occurred below because the DIR investigated Appellant Reeves' NRS 616D.330 complaint and found that she had been provided both a communication log and copies all correspondence between CCMSI and her treating physician, Dr. Petroff. *See CCMSI 07/21/014 Answering Brief* at p. 17; *Department of Industrial Relation's 07/22/14 Joinder To CCMSI's Answering Brief* at pp. 7-8. But the fact that Appellant Reeves received something captioned "Log of Oral Communications" from CCMSI is meaningless because such so-called "log" was false and the product of substantive unfairness.

Respondents completely ignore the substance of Appellate Reeves' injury - which is precisely what the Administrative Court and the District Court did below. The issues are not whether a "log" was provided pursuant to NRS 616D.330 or whether Appellant Reeves received copies of written communications between CCMSI and Dr. Petroff. The gravamen of Appellant Reeve's injustice is that Department of Industrial Relations, the Administrative Court and the District Court abused their discretion by failing and refusing to consider that CCMSI's "log" was

a fraud upon the administrative process - a phony made up years after-the-fact.²

"This court has previously noted that an abuse of discretion occurs whenever a court fails to give due consideration to the issues at hand." *Patterson v. State*, 129 Nev. Adv. Op. 17, 298 P.3d 433, 439 (Nev. 2013)(citations omitted)(finding that justice court abused its discretion by failing "to make an adequate inquiry and give due consideration to the prejudice to Patterson or the extent of the delay or inconvenience that the substitution of Ogata would have caused."). Indeed, the abuse of discretion below is manifest because CCMSI's "log" was so patently false: Representing that claimant and claimant's husband were present at the meeting when, in fact, CCMSI expressly prohibited them from attending (*see TCR Vol. 2 at 261-62*) and the purported entry of the communication with Dr. Petroff was created well over a year and a half after-the-fact:

² In fact, all judicial bodies below failed to make any findings regarding whether CCMSI's patently false "Claim File Log of Oral Communication" even complied with NRS 616D.330. *See TCR Vol. 1 at 211-215 (Doc. Bates 00035-39)(07/22/10 Determination); TCR Vol. 1 at 217-218 (Doc. Bates 000041-42)(10/01/10 Determination); TCR Vol. 1 at 88-92 (06/15/11 ADM APPEAL ORDER); and TCR Vol. 5 at 1179-1183 (District Court's December 24, 2012, Order Denying Petition for Judicial Review). See NRS 233B.125 (final administrative orders must set forth separate factual findings and conclusions of law).*

CLAIM FILE
LOG OF
ORAL COMMUNICATION

| Claimant's Name: Susan Reeves | | Claim Number: 88S01H243724 |
|---|------|---|
| Claimant's Attorney: | | Treating Physician: |
| DATE | TIME | ACTIVITY |
| 9/8/06 | | Adjuster phone call to Jeff Dietrich, PT |
| 6/29/04 | | Medical staffing with adjuster, supervisor, Dr. Louis Mortillaro, Dr. Petroff, defense attorney, claimant, and claimant's husband |
| | | |
| | | |
| | | |

See TCR Vol. 2 at 298 (Doc. Bates 000009).

Similarly, Appellant Reeve's other victimization is not whether or not she purportedly received copies of written communications. Appellant Reeves was trampled underfoot by a clear unfair process, to wit:

(a) CCMSI forced her and her attorney out of Dr. Petroff's office so they meet with Dr. Petroff without her presence and have oral, unrecorded (e.g., there is no evidence of any audio recordings of that meeting in the record) communications between CCMSI and Dr. Petroff³;

(b) That after said meeting with CCMSI, Dr. Petroff somehow, incredibly changed his professional diagnosis from stating that Appellant Reeves was disabled and "will not be able to return to gainful employment" (which he had done

³ See TCR Vol. 2 at 261-62.

time and again, over several months⁴ to suddenly stating that Appellant Reeves was not disabled and could go back to work. *See TCR Vol. 2 at 262.*

(c) The Department of Industrial Relations then relied on Dr. Petroff's clearly suspicious reversed prognosis (*see TCR Vol. 1 at 213, Doc. Bates 00037*) - which furthermore was a product of *ex parte* and unrecorded communications between CCMSI and Dr. Petroff - to deny her benefit penalties under NRS 616D.120 (*see TCR Vol. 1 at 217-218 (Doc. Bates 000041-42)(10/01/10 Determination)*). Such process is by itself highly prejudicial. *See e.g., Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S.Ct. 1175 (1963)(administrative body which relied, even partially, on *ex parte* evidence in determining substantive rights of party violated procedural due process).

II. CONCLUSION

For the foregoing reasons, Appellant Reeves requests the Court to STAY a determination of whether the DIR improperly denied her a benefit penalty under NRS 616D.120 on the grounds that her claim had been properly closed until the Court first resolves the preliminary issue of whether Appellant Reeves' claim was

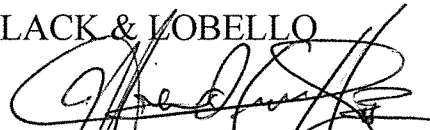
⁴ *See TCR Vol. 2 at 322-23 (Doc Bates. 000033-34); see also TCR Vol. 2 at 321 (Doc. Bates 000032).*

properly closed, which is pending in the matter captioned *Reeves vs. Bally's Grand Hotel & Casino*, Nevada Supreme Court Case No. 62981 (filed April 11, 2013).

Alternatively, the Court should VACATE the administrative determinations below because they were the product of an unfair and unjust process, tainted by fraudulent deception and misrepresentations, which prejudiced her substantive rights.

Respectfully,

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ATTORNEY'S CERTIFICATE PER NRCP 28.2

I hereby certify that this reply brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Word Perfect in font size 14.

I further certify that this reply brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

Proportionately spaced, has a typeface of 14 points or more, and contains 1235 words and does not exceed 30 pages.

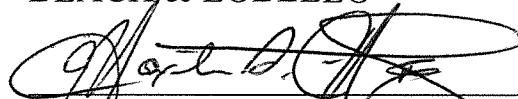
Finally, I certify that I have read this appellate brief and, to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 20th day of August, 2014.

Respectfully,

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CERTIFICATE OF SERVICE

I certify that on 20th day of August, 2014, I electronically filed and deposited in the U.S. Mail, correct postage pre-paid, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF**, addressed to the following at their last known address:

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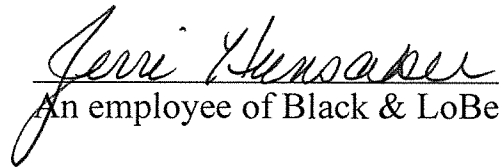
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