

IN THE SUPREME COURT OF THE STATE OF NEVADA

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EMPLOYERS INSURANCE COMPANY OF)
NEVADA,)
Appellant)
vs.)
DANIEL CASTELAN,)
Respondent)

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Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 83765

APPELLANT'S REPLY TO THE OPPOSITION TO
EMERGENCY MOTION FOR STAY PER NRAP 27(e) and NRAP 8

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REPLY TO THE OPPOSITION FOR STAY

The Appellant Employers Insurance Company of Nevada, by and through its counsel David H. Benavidez, replies to the Respondent's Response to the Motion for Stay.

The record confirms Dr. Shah meant to offer temporary light duty restrictions in 2019. Good cause appearing, the Appeals Officer reconsidered and denied temporary total disability (TTD).

The claimant has rejected both temporary and permanent light duty job offers from the employer. He elects not to work, but wants to be paid TTD.

The District Court is now ordering retroactive TTD through the current date and time. The last disability slip in the current record was in 2019 at the time the appeal decision was drafted. The claimant continued to treat at the time of appeal. Was the next disability slip full duty, temporary light duty, permanent light duty or off work? As noted in the motion, as a matter of law, a disability slip is only good through the next disability slip. Ordering TTD through the current time violates NRS 616C.475 and Nevada Indus. Comm'n v. Taylor 98 Nev. 131, 642 P.2d 598, March 29, 1982, Amazon.com v Dee Dee Magee, 121 Nev 632, 119 P.3d 732, September 22, 2001, where the court, citing NRS

1 616C.475, concluded that TTD must cease when restrictions are
2 recommended by the treating doctor and the employer offers light
3 duty in accord with the restrictions.
4

5 At the time of appeal, Dr. Shah did not issue a disability
6 slip in accord with NRS 616C.475. Instead he noted at the end of
7 his report "long term disability status to be determined after
8 treatment is completed." This statement is not an off work slip,
9 nor does it offer temporary restrictions in accord with NRS
10 616C.475 and the case law noted above. The Appeals Officer's
11 original reliance upon this statement is an error of law, abuse of
12 discretion or a mistake.
13
14

15 Asking for clarification was warranted. Dr. Shah
16 responded that he released the claimant with temporary
17 restrictions which lead to the motion for reconsideration, a new
18 decision and this litigation.
19

20 Respondent and the District Court note that Dr. Shah should
21 have been asked before the appeal. As already noted, "long term
22 disability status to be determined after treatment is completed"
23 is not a disability slip and fails to comply with NRS 616C.475.
24 The statement says nothing about current temporary or permanent
25 restrictions in accord with NRS 616C.475. There was clearly good
26
27
28

1 cause for Dr. Shah's clarification which the Appeals Officer
2 correctly relied upon.

3
4 If the stay is denied, the Insurer will be forced to pay TTD
5 to date even though Dr. Shah released the claimant to light duty
6 in 2019, the employer offered light duty in 2019 and the claimant
7 rejected work. Without further records being submitted
8 bringing the record current, the claimant may be currently full
9 duty, may be currently discharged from care or has abandoned
10 medical care.

11
12 Good cause exists for the stay.

13
14 **CONCLUSION**

15 Based on the above noted arguments, Appellant respectfully
16 requests this Honorable Court grant the stay pending review by the
17 Court.

18
19 DATED this 17th day of December, 2021.

20
21 By: 

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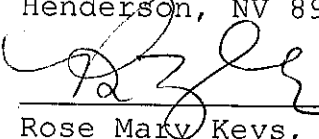
CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury, that I am an employee of The Law Office of David H. Benavidez and on the 17th day of December, 2021, I deposited the foregoing **REPLY TO RESPONDENT'S RESPONSE TO EMERGENCY MOTION FOR STAY** in the United States Mail, with first class postage fully prepaid thereon or had hand-delivered, copies of the attached document addressed as follows:

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