

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN REEVES,

Appellant,

vs.

DIVISION OF INDUSTRIAL
RELATIONS, and DEPARTMENT OF
ADMINISTRATION,

Respondents.

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Case No.: **62468**

District Court Case No. A644791

RESPONDENT DIVISION OF INDUSTRIAL RELATIONS'

**JOINDER IN RESPONDENT
CCMSI'S ANSWERING BRIEF**

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1 **I. JURISDICTIONAL STATEMENT**

2 The Division of Industrial Relations ("DIR") joins in the Jurisdictional
3 Statement contained in the Answering Brief submitted by Cannon Cochran
4 Management Services, Inc. ("CCMSI"), real party in interest.
5

6 **II. STATEMENT OF THE ISSUES**

7 DIR joins in the Statement of Issues as presented in CCMSI's Answering
8 Brief.
9

10 **III. STATEMENT OF THE CASE**

11 DIR joins in the Statement of the Case as presented in CCMSI's Answering
12 Brief. In addition, for matters of clarification, DIR submits the following. The
13 Claimant Reeves appeals from a District Court Order to deny her Petition for
14 Judicial Review. The matter originally arises from an administrative adjudication
15 following a hearing conducted by an Appeals Officer, Department of
16 Administration, Hearings Division.¹ The Appeals Officer granted DIR's Motion
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21 ¹ The Department of Administration, Hearings Division, is a state agency
22 completely separate from and independent of DIR. Its Hearings Division
23 adjudicates contested workers' compensation matters. NRS 616C.295, NRS
24 616C.300, NRS 232.213(2)(c). Generally there is a two-level hearing process.
25 The Hearing Officer conducts an informal hearing and issues a written decision.
26 NRS 616C.315, NRS 616C.330. An aggrieved party may appeal the Hearing
27 Officer's decision to the Appeals Officer who conducts a *de novo* hearing. NRS
28 616C.340, NRS 616C.345, NRS 616C.360. *See also, Liggett v. SIIS*, 99 Nev. 262,
661 P.2d 882 (1983). In this instance, however, subsequent injury matters are
directly appealable to the Appeals Officer. NRS 616B.587(7). The decision of
the Appeals Officer, as the administrative law judge, is the final and binding

1 to Dismiss or in the Alternative Summary Judgment after a hearing on its merits.
2 Reeves was represented at the hearing by an attorney with the Nevada Attorney
3 for Injured Workers ("NAIW").
4

5 Reeves submitted a number of letters to DIR beginning in February 28,
6 2010. She first requested DIR assist her in obtaining oral communications/written
7 records of meeting she alleged to have taken place between CCMSI, Bally's
8 third-party administrator for workers' compensation claims, and/or Bally's as her
9 employer at the time of the accident and her physicians. Record on Appeal
10 ("ROA") Vol. 1 at 193. The letter did not request a benefit penalty. DIR
11 conducted a review of the file and found no violation occurred. DIR determined
12 that Reeves was provided with a complete copy of the claims file. ROA Vol. 1 at
13 208-210. DIR did not include notice of a right to appeal because the letter did not
14 comprise a DIR "determination" for which appeal rights are afforded. The letter
15 was intended as informational in response to a request for assistance. Reeves did
16 not attempt to appeal this letter to an Appeals Officer.
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21 Thereafter, Reeves submitted a complaint to DIR dated June 1, 2010. ROA
22 Vol. 2 at 420-421. In that complaint, she alleged Bally's and/or CCMSI failed to
23 make TTD payments owing since August 26, 1998. Attached to her complaint
24 was a December 1, 2003 Appeals Officer Decision and Order which reversed
25
26

27 administrative decision for purposes of judicial review. NRS 616C.340(6) and
28 NRS 616C.370.

1 claim closure. DIR issued a determination letter dated July 22, 2010. ROA Vol.
2 2 at 413. DIR determined that CCMSI denied Reeves' request for TTD benefits
3 based on a reporting from Dr. Petroff dated June 29, 2004 because there was no
4 evidence of disability. *Id.* Reeves had previously appealed that particular
5 determination to the Appeals Officer which affirmed denial of those TTD benefits
6 because Reeves failed to timely appeal.
7

8
9 In addition, in a separate Decision and Order, the Appeals Officer affirmed
10 CCMSI's determination to close Reeves' claim. That decision was thereafter
11 affirmed by the District Court and subsequently appealed to the Nevada Supreme
12 Court. The Claimant failed to include this relevant information in her complaint.
13 Because there was an existing determination to close Reeves' claim, DIR
14 concluded that CCMSI committed no violations in the handling of her requests
15 for TTD payments. Reeves appealed this determination to the Appeals Officer.
16
17 ROA, Vol. 2 at 415-422.
18

19
20 Reeves wrote again to DIR on dated September 11, 2010 requesting it
21 revisit its investigation into her February 28, 2010 letter. ROA Vol. 1 at 203-204.
22 DIR responded to her on October 1, 2010, reiterating that CCMSI had provided
23 the log of oral communications. ROA Vol. 1, 217-218. All of the other
24 complaints the Reeves repeated were addressed in the July 22, 2010
25 determination she previously appealed. This letter, too, did not contain appeal
26 rights as it was a request for information repeating the same request the Claimant
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28

1 had already made. The Claimant did, however, file an appeal of this letter with
2 the Appeals Officer. ROA Vol. 1 at 218.

3 The matters were consolidated and heard by the Appeals Officer on April
4 13, 2011. ROA Vol. 1 at 15-85. Following the two hour hearing to try to
5 determine what issues Reeves was attempting to appeal, DIR filed a Motion to
6 Dismiss or in the Alternative Motion for Summary Judgment. ROA Vol. 1 at
7 159-170. After briefing by all sides, the Motion was granted by the Appeals
8 Officer on June 15, 2011. ROA Vol. 1, 110-112. The Decision held that
9 "viewing the evidence in a light most favorable to [Reeves], there is no factual
10 basis to support a finding that the administrator [CCMSI] delayed in paying
11 [Reeves] the TTD in this claim." *Id.* Reeves then filed a proper person Petition
12 for Judicial Review. ROA, Vol. 1 pp. 1-3. The District Court denied the Petition
13 affirming the Appeals Officer's Decision and Order. ROA Vol. 5, 1177-1181.
14 Reeves then filed the instant appeal.

15 IV. STATEMENT OF FACTS

16 In addition to the facts presented in CCMSI's brief, DIR will address some
17 issues peculiar to this agency. DIR is a state regulatory agency. DIR's Workers'
18 Compensation Section ("WCS") is charged with ensuring the timely and accurate
19 delivery of workers' compensation benefits and employer compliance with
20 mandatory coverage provisions. NRS 616A.400.

1 DIR is responsible for investigating complaints by injured workers
2 alleging he or she is entitled to a benefit penalty under NRS 616D.120. DIR also
3 responds to requests for assistance from claimants who may be having difficulties
4 during the claims process. Should a claimant file a complaint alleging a violation
5 of any statute or regulation pursuant to NRS Chapters 616A through 617 or NAC
6 Chapters 616A through 616D, the Division will conduct an investigation
7 including reviewing the claims file and requesting a response from the third-party
8 administrator. DIR will then issue a determination to award or not to award a
9 benefit penalty. That determination, if it in fact comprises a determination, may
10 be appealed to the Appeals Officer. NRS 616D.140. Appeals Officers have
11 limited jurisdiction: they hear contested claim appeals pursuant to NRS
12 616C.345 and benefit penalty appeals pursuant to NRS 616D.140. DIR is not
13 responsible for awarding workers' compensation benefits. DIR does not manage
14 claims. Claims are managed and benefits are paid by individual insurers or the
15 insurers' third-party administrators ("TPA") like CCMSI.²
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21 In the instant appeal, DIR issued only one determination not to impose a
22 benefit penalty. The other two letters were either repetitive of the complaint or a
23 response to a request for assistance and did not contain appeal rights.
24

25
26 ²DIR does have responsibilities for the Uninsured Employers' Claim Account for
27 workers injured on a job where his or her employer was uninsured. However,
28 those claims are also administered by a third-party administrator. DIR does not
manage the day-to-day of any claim.

1 **V. SUMMARY OF THE ARGUMENT**

2 DIR joins in CCMSI's Summary of the Argument.

3 **VI. ARGUMENT**

4 The Division joins in CCMSI's statement of the standard of review on
5
6 appeal and offers the following brief argument.

7 A. The actions complained of do not give rise to a benefit penalty.

8
9 Pursuant to NRS 616D.120, the Division is unable to "modify or negate in
10 any manner a determination or any portion of a determination made by a hearing
11 officer, appeals officer or court of competent jurisdiction..." In addition, the
12 Nevada Supreme Court has held that "administrative agencies cannot enlarge
13 their own jurisdiction." *See, Reno v. Civil Serv. Comm'n of Reno*, 117 Nev. 855
14 (2002), *citing, Southern Nev. Mem. Hosp. v. State*, 101 Nev. 387, 394, 394, 705
15 P.2d 139, 144 (1985). The scope of an agency's authority is limited to the matters
16
17 the legislative body has expressly or implicitly delegated to the agency. *Clark*
18 *Co. v. State, Equal Rights Comm'n.*, 107 Nev. 489, 492, 813 P.2d 1006, 1007
19
20 (1991).

21
22 The insurer's determinations to close the claim (since 2006) and not to pay
23
24 TTD benefits was affirmed by a Hearing Officer, an Appeals Officer, the District
25 Court, and has been submitted to the Supreme Court for decision; it is telling that
26 information regarding these subsequent court proceedings was omitted by Reeves
27
28 in her complaint to DIR. It was only found during the course of DIR's

1 investigation. What Reeves is requesting is that DIR order CCMSI, in
2 contravention of all of these subsequent decisions, to pay TTD benefits. This is
3 outside the scope of DIR's jurisdiction. DIR has explained this to Reeves. Under
4 these circumstances, there was substantial evidence to find there was no
5 unreasonable delay in compliance with a Hearing or Appeals Officer's Decision
6 upon which to impose an administrative fine and/or benefit penalty because in
7 fact, no court had or has ordered TTD to be paid to Reeves in the first place.
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9 There is no abuse of discretion in the Appeals Officer's finding there was no
10 factual basis to find a delay in payment of any TTD to Reeves.
11

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13 B. There was no actionable conduct raised in Reeves' requests for
14 assistance regarding communications with the medical providers.

15 Pursuant to NRS 616D.120(1) and (3), an administrative fine and benefit
16 penalty may be imposed only in the event an insurer, TPA, etc., has been found to
17 have engaged in prohibited conduct as described in NRS 616D.120(1),
18 subsections (a) through (h) and (i). The Claimant requested assistance in
19 obtaining communications from her insurer. The Division on both April 26th and
20 October 1, 2010, advised the Petitioner that all communications were provided.
21
22 The letter was purely informational and not a determination and did not include
23 any appeal rights.
24

25 Reeves makes the argument that there is "demonstrable unfairness" of
26 being excluded from participating or witnessing any communications between
27
28

1 Bally's, CCMSI and her medical providers, even so much as characterizing these
2 alleged conversations as "clandestine." Appellant's Opening Brief at 10. Nevada
3 law specifically permits oral communications between a third-party administrator,
4 among others, and a medical provider so long as the administrator maintains a log
5 that includes the date, time and subject matter of the communication and makes
6 the log available upon request by DIR or the injured employee or his
7 representative. NRS 616D.330. DIR concluded that the log was made available
8 to Reeves and so advised her. That is the extent of DIR's authority.

11 Moreover, a common theme throughout Reeves' brief is the belief that DIR
12 may somehow order the payment of benefits or other relief to her. This is
13 patently untrue. Contested claims are handled through the contested claims
14 process. NRS 616C.295 through NRS 616C.392. If Reeves believed or believes
15 that any determination made by CCMSI was improper or unfair it is her
16 prerogative, in fact it is her right, to appeal that determination to the Hearing
17 Officer pursuant to NRS 616C.315. Reeves is not uninformed as to this process.
18 However, DIR does not have the authority to order any third-party administrator
19 or insurer to pay benefits. It is specifically outside DIR's scope of authority.

23 The Appeals Officer did not commit error in granting summary judgment
24 on any of these issues.
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VII. CONCLUSION

Reeves currently has pending a Nevada Supreme Court appeal regarding payment of TTD benefits. Supreme Court No. 62981. DIR cannot impose a benefit penalty regarding an unreasonable delay in the payment of TTD benefits where no TTD was ordered to be paid. Moreover, DIR advised Reeves properly that the log of communications was provided to her as she had requested in her letter(s). The letter did not comprise a determination for which appeal rights are provided. Moreover, again, DIR does not have the authority to determine whether upon Reeves's allegation, that the log was "fraudulent." There appears to be a fundamental misunderstanding regarding DIR's authority.

Therefore, the Appeals Officer's Decision and Order granting summary judgment was neither arbitrary nor capricious and that the decision was supported by substantial evidence in the record should be affirmed on appeal to this Court.

Dated this _____ day of July, 2014 and respectfully submitted by:

DIVISION OF INDUSTRIAL RELATIONS

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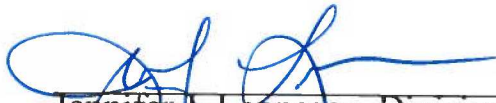
ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(1)(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 Microsoft Word in Times New Roman 14 point font. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points and contains 2484 words.

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 N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relief 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 21 day of July, 2014.

DIVISION OF INDUSTRIAL RELATIONS



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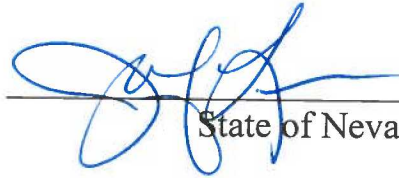
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: Respondent Division of Industrial Relations'
Joinder in Case 62468

Person(s) Served: Maximiliano Couvillier, Esq. Lionel Sawyer & Collins 300 S. Fourth St. Las Vegas, NV 89101	U.S. Mail ____ via State Mail room (regular or certified) ____ deposited directly with U.S. Mail Service ____ Overnight Mail ____ Interdepartmental Mail ____ Messenger Service ____ Facsimile fax number: _____
Person(s) Served: Dalton Hooks, Esq. Floyd Skeren & Kelly 4570 S. Eastern #28 Las Vegas, NV 89119	U.S. Mail ____ via State Mail room (regular or certified) ____ deposited directly with U.S. Mail Service ____ Overnight Mail ____ Interdepartmental Mail ____ Messenger Service ____ Facsimile fax number: _____
Person(s) Served: Shirley Lindsey, Esq. Nevada Dept. of Admin. 2200 S Rancho, Ste. 220 Las Vegas, NV 89102	U.S. Mail ____ via State Mail room (regular or certified) ____ deposited directly with U.S. Mail Service ____ Overnight Mail ____ Interdepartmental Mail ____ Messenger Service ____ Facsimile fax number: _____

DATED this 21 day of July, 2014.



State of Nevada Employee

AFFIRMATION
PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Respondent
Division of Industrial Relations' Joinder filed in or submitted for Supreme Court
Case **62468**:

✓ Does not contain the social security number of any person

or


Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

or

B. For the Administration of a public program or for an application
for a federal or state grant.

Dated this 21 day of July, 2014.



Jennifer J. Leonescu, Esq.
Division Counsel
Division of Industrial Relations