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IN THE SUPREME COURT OF THE STATE OF NEVADA

FOCUS FRAMING and SUN CITY
ELECTRIC,

Appellants,

v.

MARTIN DURAN PEREZ

Respondent.

SUPREME COURT NO. 79836

DISTRICT COURT NO. A18-74729

Electronically Filed
Jun 09 2020 03:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' REPLY BRIEF

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STATUTES

NRS 233B.135 2

1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons
3 and entities as described in NRAP 26.1(a), and must be disclosed:
4

5 1. The Appellant FOCUS FRAMING, states that it does not have any parent
6 corporation, or any publicly held corporation that owns 10% or more of its
7 stock, nor any publicly held corporation that has a direct financial interest in
8 the outcome of the litigation. NRAP 26.1(a).
9

10 2. The Appellant SUN CITY ELECTRIC, states that it does not have any parent
11 corporation, or any publicly held corporation that owns 10% or more of its
12 stock, nor any publicly held corporation that has a direct financial interest in
13 the outcome of the litigation. NRAP 26.1(a).
14

15 3. The undersigned counsel of record for FOCUS FRAMING and SUN CITY
16 ELECTRIC has appeared in this matter before District Court. JOHN P.
17 LAVERY, ESQ. has also appeared for the same before District Court.
18 DANIEL L. SCHWARTZ, ESQ. has also appeared for the same at the
19 administrative proceedings before the Department of Administration.
20
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1 I.

2 REPLY

3 **A. Lack of Reference to Testimony in the Decision**

4
5 There was no evidence produced or any finding in the Appeals Officer's
6 Order to establish that Respondent's prior foreman, Pedro, had any ability to
7 correct Respondent's issue with his check. The only thing that Respondent testified
8 to was that Pedro was the person who gave him his check. (APP pp. 9-10) Without
9 some evidence to show that Pedro *actually* had authority to correct the paycheck
10 issue, the fact that Respondent chose to confront Pedro about the paycheck
11 establishes that this unfortunate injury occurred outside the course of and did not
12 arise out of Respondent's employment.
13
14

15
16 Respondent spends most of his Answering Brief recounting the testimony
17 that was had before the Appeals Officer. Why does Respondent need to do this?
18 Because the only reference to testimony in the entire decision is a one line finding
19 that Respondent testified that he needed to talk to Pedro if he had an issue with his
20 check. Not only does this finding conflict with the actual evidence, there is no
21 reference to any other testimony in the entire Decision. Had the Appeals Officer
22 referenced the other testimony, there would be no need for Respondent to spend so
23 much time recounting what happened at the actual hearing on this matter.
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1 Further, while Respondent does attempt to buttress the Decision with his
2 comments on the testimony of the various parties, the fact is that said testimony is
3 not even mentioned in the Decision. There were indeed four witnesses who gave
4 testimony and an Appeals Officer's Decision and Order which references none of
5 it. On its face the Decision is arbitrary and capricious. NRS 233B.135.
6
7

8 Further, Respondent does nothing to show that there is any reference in the
9 Decision that the proper course of action for Respondent to dispute his paycheck
10 would have been to contact payroll. Respondent even goes to far as to claim that it
11 was essentially a harmless error to exclude the testimony of Mr. Pao and Mr.
12 Mendoza because they were safety officers and safety officers have no power or
13 authority over a paycheck dispute. However, Mr. Pao explicitly testified that the
14 correct procedure for contesting a check so was to contact payroll and that Pedro
15 "couldn't have done nothing" about Respondent's check grievance. (APP p. 35-6-
16 24) There was no evidence to dispute that testimony.
17
18
19

20 **B. Embarking on Tasks Outside the Course of Employment Indeed**
21 **Remove the Employee from the Course of Employment**

22 Respondent argues that Petitioners' citations to out-of-state law and to
23 Larson's treatise should be disregarded because they are not binding. Though it is
24 true that these sources are not binding, Petitioners never argued that they were
25 binding. Rather, they are instructive on the point that injuries which are unrelated
26 to a claimant's employment are not compensable through industrial insurance. (See
27

1 Rio Suite Hotel v. Gorsky, 113 Nev. 600, 939 P.2d 1043(1997) “a claimant must
2 demonstrate that the origin of the injury is related to some risk involved within the
3 scope of employment;” Mitchell v. Clark County School District, 121 Nev. 179,
4 111 P.3d 1104 (2005) “if an accident is not fairly traceable to the nature of
5 employment or the workplace environment, then the injury cannot be said to arise
6 out of the claimant’s employment.”)
7
8

9 Here, Respondent attempted to get his paycheck corrected by speaking with
10 his former foreman, Pedro. However, there was no evidence to show that Pedro
11 could have actually resolved Respondent’s issue. By leaving his jobsite and
12 embarking on a task which neither party had any authority over, it was legal error
13 for the Appeals Officer to conclude that this claim is compensable. Respondent’s
14 job title with Employer was a primer; Pedro’s job title with Employer was
15 foreman. There is no evidence that either primer or a foreman have any authority to
16 issue a new check or correct alleged errors with a check. That task is relegated to
17 payroll. However, no party outside of these proceedings would know that as the
18 subject decision mentions none of it.
19
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22 There is no interpretation of the facts in the instant case which would render
23 this claim compensable. Neither Respondent nor Pedro’s job duties involved
24 issuing or correcting checks. As such, Respondent was not performing a task
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1 related to his employment when he left his job site and accosted Pedro about his
2 allegedly short check.

3
4 **VI.**

5 **CONCLUSION**

6 Based upon the foregoing, Appellant requests that this Court reverse the
7 Appeals Officer and the District Court and find that the Respondent's claim for
8 workers' compensation benefits was properly denied.
9

10 Dated this 9 day of June 2020.

11
12 Respectfully submitted,

13 **LEWIS, BRISBOIS, BISGAARD & SMITH, LLP**

14 /s/ Joel P. Reeves, Esq.

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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared
5 in a proportionally spaced typeface using Microsoft Word in Times New Roman
6 font size 14.
7

8
9 2. I further certify that this brief complies with the type-volume
10 limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief
11 exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14
12 points or more, and contains 762 words and 68 lines of text.
13

14 3. Finally, I hereby certify that I have read this appellate brief, and to the
15 best of my knowledge, information, and belief, it is not frivolous or interposed for
16 any improper purpose. I further certify that this brief complies with all applicable
17 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
18 every assertion in the brief regarding matters in the record to be supported by a
19 reference to the page and volume number, if any, of the transcript or Appendix
20 where the matter relied on is to be found.
21
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1 4. I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 Respectfully submitted,
6 **LEWIS, BRISBOIS, BISGAARD & SMITH,**
7 **LLP**

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1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on
3 the 9 day of June 2020, service of the attached **APPELLANTS' REPLY**
4 **BRIEF** was made this date by depositing a true copy of the same for mailing, first
5 class mail, and/or electronic service as follows:

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