

SALVATORE C. GUGINO  
DANIEL L. SCHWARTZ\*  
MONTE HALL\*\*  
JOHN P. LAVERY\*\*\*  
BARBARA E. SCHUBEL\*\*\*\*

GUGINO & SCHWARTZ  
1701 WEST CHARLESTON BOULEVARD  
SUITE 500  
LAS VEGAS, NEVADA 89102

331-579  
TELEPHONE: (702) 385-3801  
FACSIMILE: (702) 385-3015  
EMAIL: gslawfirm@aol.com

ALSO ADMITTED IN NEW JERSEY & PENNSYLVANIA\*  
ALSO ADMITTED IN UTAH\*\*  
ALSO ADMITTED IN COLORADO &  
DISTRICT OF COLUMBIA\*\*\*  
ALSO ADMITTED IN CALIFORNIA &  
DISTRICT OF COLUMBIA\*\*\*\*

February 2, 2001

**VIA FACSIMILE & U.S. MAIL**

John F. Wiles, Esq.  
Division Counsel  
Department of Business and Industry  
Division of Industrial Relations  
1301 North Green Valley Parkway, Suite 200  
Henderson, Nevada 89015

Re: Claimant : Atilano Baez  
Employer : Alpine Steel  
Claim No. : SCC0107333

Dear John:

I am unsure if this letter should be sent to your or someone else. However, since you are the Division Counsel, I assume you can either address these concerns or forward this matter to the appropriate party. As always, I appreciate your courtesy.

The facts, as I understand them, are as follows:

A complaint was sent to the DIR by Mr. Baez. Although the complaint was written in Spanish, the essence of Ms. Baez' problem had to do with whether the Employer had provided him with appropriate temporary modified duty. Upon receipt of the complaint, Luisa Carpenelli contacted the Administrator, S & C Claims Services, Inc. During that discussion, Ms. Carpenelli insisted on auditing the claim file the same day. It was explained to Ms. Carpenelli that (a) the Administrator did not even know a complaint had been filed and had no copy of the complaint and (b) the claimant had written the Administrator requesting temporary total disability benefits based upon his allegations and a determination was being rendered. A comment was made by your auditor that "construction companies do not have modified duty". This is simply ludicrous. Ms. Carpenelli insisted on auditing the file that afternoon. My client contacted me and asked what to do in this matter. I advised them to allow Ms. Carpenelli access to the file, but demand that she inform them of the authority for such an impromptu audit. Upon arriving at my client's office, Ms. Carpenelli finally gave my client a copy of the complaint. As for the authority for this audit, Ms. Carpenelli cited to the NAC provision that all files must be maintained in the State of Nevada.

S & C INC  
FEB 05 2001

John F. Wiles, Esq.  
Page 2

After reviewing the file, Ms. Carpenelli informed my client that she planned to visit the job site of Alpine Steel to determine whether the job offer was valid. I immediately instructed Alpine Steel that they will not allow Ms. Carpenelli on their job site. It is my understanding that Ms. Carpenelli never appeared at the job site. Incidentally, Ms. Carpenelli failed to leave any indication in the file that she had performed an audit. Seems strange?

John, I am very troubled with this action. As you are aware, your agency is mandated with assuring that the NRS and NAC are followed. Nowhere does the law indicate that you are to advocate or investigate the merits of factual complaints.

Mr. Baez was offered modified duty. He felt it was not within his restrictions, so he left. Mr. Baez then requested temporary total disability benefits. Within the time frame for responding to that request, a determination letter was issued denying Mr. Baez' request. Mr. Baez has now appealed and this matter is set for hearing before the Hearing Officer on February 15, 2001.

What is clear is that for some reason, Ms. Carpenelli feels that she is some sort of "super authority". Either she (a) has a personal interest in this case, (b) has some sort of animosity toward my clients or (c) is unaware of her role and role of her agency. Under any of these possibilities, her actions were entirely inappropriate.

I am asking that this matter be fully investigated and a formal response be sent to this office.

Incidentally, the compliant, which Ms. Carpenelli left at my client's office was written in Spanish. Since I can only assume its content, you can consider this letter my client's formal response. Once again, a formal response, after the file was already audited, seems meaningless.

Should you have any questions, please do not hesitate to contact me. Thank you for your professional cooperation in this matter.

Sincerely,

GUGINO & SCHWARTZ



DANIEL L. SCHWARTZ, ESQ.

DLS/sk

cc: Jill Crowley, S & C Claims Services, Inc.  
Alpine Steel  
Luisa Carpenelli, DIR

S & C INC  
FEB 05 2001