

NEVADA DEPARTMENT OF ADMINISTRATION  
BEFORE THE APPEALS OFFICER

STATE OF NEVADA  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF WORKERS' COMPENSATION  
JAN 23 2002

In the Matter of the )  
Industrial Insurance Claim )  
of )  
Atilano Baez )

Claim No.: SC0107333  
Appeal No.: LAS 2001E-2038-NR  
LAS 2001C-2498-NR

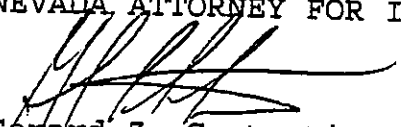
MOTION FOR RECONSIDERATION

COMES NOW, Claimant Atilano Baez, by and through his attorney, Gerard Z. Costantian, Esq., Deputy Nevada Attorney for Injured Workers, and pursuant to NAC 616C.312 and 616C.327 moves the Appeals Officer for reconsideration as more fully explained herein.

This motion is made and based on the Opposition to Findings of Fact and Conclusions of Law filed January 16, 2002.

DATED this 22 day of January, 2002.

NEVADA ATTORNEY FOR INJURED WORKERS

  
Gerard Z. Costantian, Esq., Deputy Attorney for the Claimant

NEVADA ATTORNEY FOR INJURED WORKERS  
1000 East William Street, Suite 213  
Carson City, NV 89701 (775) 687-4076  
555 E. Washington Avenue, Suite 4800  
Las Vegas, NV 89101 (702) 486-2830

Motions\ GZC BaezAt MotRecon

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JAN 24 2002

APPEALS OFFICE

BEFORE THE APPEALS OFFICER

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In the Matter of the Contested Industrial Insurance Claim )  
of )  
ATILANO BAEZ, )  
Claimant. )

Claim No: SC 0107333  
Appeal No: LAS 2001-C-2498-NR  
LAS 2001-E-2038-NR

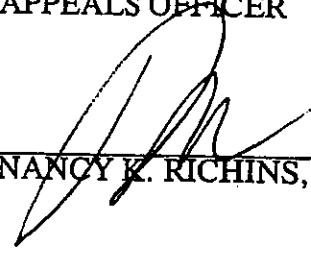
ORDER DENYING MOTION FOR RECONSIDERATION

This matter having come before the Appeals Officer on the Claimant's MOTION FOR RECONSIDERATION filed January 23, 2002. The Appeals Officer having reviewed the Motion filed thereto and good cause appearing therefor;

**IT IS HEREBY ORDERED** that the MOTION FOR RECONSIDERATION is denied.

Dated this 24<sup>th</sup> day of January, 2002.

APPEALS OFFICER

  
NANCY K. RICHINS, ESQ.



S&C Claims Services, Inc.  
3380 West Sahara Avenue  
Suite 120  
Las Vegas, Nevada 89102  
(702) 873-5115  
(800) 362-5198  
FAX (702) 876-5584

**SUPERIOR & COMPREHENSIVE CLAIMS ADMINISTRATION**

Alpine Steel  
Attn: Darlene and Randy

Claims report:

Atilano Baez-per Alpine Steel, Mr. Baez has chosen to refuse modified duty. Dr. Grondel is treating Mr. Baez for a fractured tibia and on September 22, 2000 took him off work. Therefore, by law, we will have to pay compensation from 9/22 forward until Mr. Baez is given some type of release. Melissa will talk to Dr. Grondel and push for a work release with restrictions of some type. Thereafter, if Mr. Baez refuses to perform modified duty, his compensation will be suspended.

Ted Farrell-per Mr. Farrell, he was given full dty release. Dr. Steven Thomas did release Mr. Farrell to full dty as of September 18, 2000. I have enclosed the release for your files. Mr. Farrell will have a permanent partial disability evaluation in the near future to determine percentage of disability for his shoulder. There is some limitation in the range of motion.

John Messing-S&C Claims did not receive the C-4 from UMC Trauma until October 2, 2000. The claim is set up, and Melissa will review and can have a compensation check ready for Mr. Messing by Friday, October 6, 2000. That will be a check for ten days and he will have compensation every two weeks after that. As far as the subrogation aspect, I am told by H.J. Shumake of Risk Services that there were engineering problems and that the general contractor as well as the concrete contractor probably both bear some responsibility. Once a report is completed, we will turn the data over to Dan Schwartz, legal counsel, to determine if subrogation is possible.

David Garcia-as you know, David Garcia has a full duty release as a result of surveillance. We are expecting litigation regarding the full duty release and the closure of the claim without a PPD. So far, no appeal has been filed.

Martin Garcia-Mr. Garcia is treating with Dr. Stewart for fracture of the elbow. Dr. Stewart has given restrictions of no use of the arm. Mr. Garcia was paid compensation until September 19, 2000, when Alpine notified us that they were able to provide modified duty. Dr. Stewart has not rescinded the restricted release at this time and therefore no compensation will be paid, even though Mr. Garcia chooses not to work modified duty.



**SUPERIOR & COMPREHENSIVE CLAIMS ADMINISTRATION**

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Page two:  
Claims-Alpine Steel

Craig Charles- Mr. Charles will definitely have permanent restrictions from his injury. Mr. Charles will not be eligible for vocational rehabilitation since his residence is out of state. Alpine Steel will be under no obligation to return Mr. Charles to permanent modified work.

Lynn Alsop- Mr. Alsop, as you indicated, has been laid off. Prior to that time, Mr. Alsop had been returned to work full duty. Mr. Alsop then appealed the full duty release, and the hearing officer remanded us to set up a one time consult with Dr. Canale to determine Mr. Alsop's work restrictions. Dr. Canale saw Mr. Alsop on August 18, 2000 and determined that he should be retrained and could not return to work. We have appealed that determination. In the interim, we were advised by legal counsel, Dan Schwartz, to have a job site analysis done. You need to make sure that a good job site analysis of Mr. Alsop's former job is performed. Please call Robbie at Jean Hanna Clark to schedule, 388-3566. If this analysis shows that Mr. Alsop could perform his regular duties, this claim will be closed for good. There was an appeal date set for October 4, 2000, but I would expect that this date will be continued.

Jill Schreiner  
Operations Manager

WF

District Court **FILED**

Clark County, Nevada **19** 1 08 PM '02

*Shirley M. Higgins*  
CLERK

ATILANO BAEZ  
Plaintiff,

-vs-  
ALPINE STEEL LLC  
SBC CLAIMS SERVICES INC  
Defendant.

Case No: A446707  
Dept. No: V

Date of Hearing:  
Time of Hearing:

STATE OF NEVADA  
DEPT OF ADMINISTRATION  
HEARINGS DIVISION  
2002 MAY 17 AM 8:53  
RECEIVED  
AND  
FILED

Signature: \_\_\_\_\_

Submitted By: 

(SIGNATURE)

Name: ATILANO BAEZ M.  
Address: 1512 N 21 ST  
City/State/Zip: LAS VEGAS NV 89101  
Telephone: 639-6968  
Attorney for: \_\_\_\_\_

RECEIVED  
FEB 19 2002  
COUNTY CLERK

DISTRIC COURT  
LAS VEGAS, NEVADA

February 19, 2002

PETITIONER:  
ATILANO BAEZ

Claim number: SCC0107333

Appeal NO: LAS2001-C-2498|NR

Would like to ask the court to please review my case,

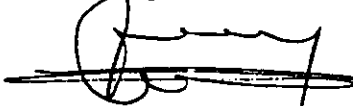
Reason, is because LUISA CAMPANILLI, of Department of Business Industry, Division of Industrial Relations did an investigation and told me that discovered a violation, the NRS 616C.475 has been violated.

I have ask for a copy of this particular file and has been denied.

Including, that the actions of S & C in pushing Dr. Grondel to make a medical decision to release me to go back work, prematurely, indicates that employer has no concern for my health and was seeking justification to get me terminated.

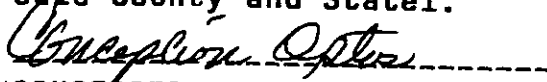
Including is a copy of document.

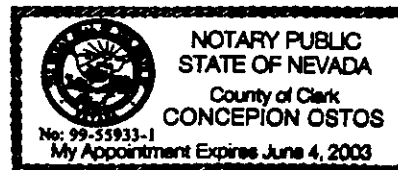
Thank you,



ATILANO BAEZ  
1512 NO. 21st STREET # 7  
LAS VEGAS, NV 89101,

SUBSCRIBE AND SWORN this 19th day of February, 2002, before me a Notary Public of Clark County, Las Vegas, Nevada in and for said County and Statel.

 (seal)  
CONCEPCION OSTOS



NEVADA DEPARTMENT OF ADMINISTRATION APPEALS OFFICE  
BEFORE THE APPEALS OFFICER

In the Matter of the Contested Claim No: SCC0107333  
 Industrial Insurance Claim )  
 of ) Appeal No: LAS2001-C-2498-NR  
 ) LAS2001-E-2038-NR  
 )  
 ATILANO BAEZ ) Employer:  
 1512 No. 21<sup>ST</sup> Street #17 ) ALPINE STEEL  
 Las Vegas, NV 89101 ) 5725 So. Valley View Blvd. #10  
 ) Las Vegas, NV 89118  
 Claimant. )

DECISION AND ORDER

This matter came regularly for hearing on Thursday, June 27, 2001 and November 8, 2001, pursuant to NRS Chapters 616A to 616D, inclusive, 617 and 233B. The claimant ATILANO BAEZ, was present and was represented by his attorney, GEORGE OSTANTIAN, ESQ. and NEVADA ATTORNEY FOR INJURED WORKERS. JOHN P. LAVERY, ESQ., appeared on behalf of the Self-Insured Employer, ALPINE STEEL (hereinafter "Employer").

The following documents were introduced into evidence:

- Employer's "A" - 23 pp.
- Employer's "B" - 7 pp.
- Claimant's "1" - 3 pp.
- Claimant's "2" - 4 pp.
- Claimant's "3" - 1 pp.
- Claimant's "4" - 2 pp.

Having duly considered the documentary evidence submitted, the testimony presented, and the arguments of counsel, the Appeals Officer finds and decides as follows:

27 . . .  
 28 . . .  
 . . .

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
 400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101  
 (702) 791-0308 - FAX (702) 791-1812

FINDINGS OF FACT

1  
2 1. On September 11, 2000, the claimant, Atilano Baez, an  
3 iron worker at Alpine Steel, sustained an industrial injuries, while  
4 working within the course and scope of his employment. In the  
5 claimant's own words he was "shaking out joist and bundle shifted and  
6 fell on my leg". The claimant completed his C4 form on the date of  
7 injury. An injury to the right leg was described.

8 2. The claimant was initially examined at the University  
9 Medical Center on the date of injury by a Dr. Carter. At that time,  
10 the diagnosis that was a left leg injury / right fibula fracture. The  
11 claimant was referred to an orthopedist.

12 3. On September 12, 2000, the claimant was seen by R. Jeff  
13 Grondel, M.D. Dr. Grondel diagnosed a right proximal fibula fracture.  
14 The claimant was referred to an orthopedist.

15 4. The Employer completed its C3 form on September 13,  
16 2000. It should be noted that at the time of the injury, the claimant  
17 had only worked for the Employer for three (3) weeks. The Employer  
18 clearly noted on the C3 form that modified duty was available.

19 5. On September 21, 2000, the claimant was issued a  
20 determination letter relative to his average monthly wage. No appeal  
21 of this determination was filed.

22 6. The claim was formally accepted on September 21, 2000.  
23 The scope of the claim was limited to the right fibula fracture.

24 7. The Employer issued a memorandum on September 22, 2000.  
25 According to the Employer, it went out of its way to provide the  
26 claimant with modified duty. However, the claimant simply showed up  
27 and refused to work. This was confirmed by the claimant's supervisor  
28 and various co-workers.



1           8.    The claimant returned to Dr. Grondel on September 22,  
2 2000. Dr. Grondel indicated that he felt the Employer was attempting  
3 to provide valid modified duty. Despite this, the claimant was taken  
4 off work for two (2) weeks.

5           9.    On October 9, 2000, the claimant was again released to  
6 modified duty.

7           10. Dr. Grondel continued to release the claimant to  
8 modified duty.

9           11. On December 8, 2000, Dr. Grondel suggested that MRI of  
10 the knee be performed. The claimant was continued on modified duty.  
11 The restrictions were sit down only.

12           12. The claimant was instructed to return to modified duty.  
13 On January 4, 2001, the claimant was sent for a sit down only job in  
14 the field. The claimant apparently refused and went home. The  
15 claimant did not call after that date. On January 9, 2001, the  
16 claimant was terminated for job abandonment.

17           13. At the hearing on this matter, Jorge Castillo testified  
18 that he informed the claimant that (a) modified duty was available  
19 within his restrictions and (b) he needed to return to modified duty  
20 work.

21           14. The Appeals Officer finds the testimony of Mr. Castillo  
22 to be credible and persuasive.

23           15. On January 12, 2001, Dr. Grondel recommended surgery  
24 on the claimant's knee.

25           16. The claimant requested temporary total disability  
26 benefits.

27 . . .

28

1           17. The claimant was sent a determination letter on January  
2 24, 2001 advising him that his request for temporary total disability  
3 benefits was denied. The basis of the denial was the availability of  
4 modified duty and the claimant's refusal to attend work.

5           18. The claimant underwent right knee surgery on January  
6 25, 2001. Dr. Grondel performed a right knee arthroscopy and right  
7 knee debridement. During the period that Dr. Grondel certified the  
8 claimant completely off work, the claimant was paid temporary total  
9 disability benefits.

10           19. On February 9, 2001, the claimant was released to  
11 modified duty.

12           20. The claimant was issued two (2) determination letters  
13 on March 9, 2001. The first advised the claimant that his temporary  
14 total disability benefits were suspended due to his modified duty  
15 release and the availability of modified duty but for his termination.  
16 The second letter advised the claimant that an overpayment of  
17 disability benefits existed and said overpayment would be subtracted  
18 from future benefits.

19           21. The claimant timely appealed the original denial of  
20 disability benefits. Following a hearing before Hearing Officer Sue  
21 Marxen, a Decision and Order was entered on March 23, 2001 reversing  
22 the Employer's determination. The Employer timely appealed to the  
23 Appeals Officer.

24           22. The claimant also timely appealed the March 9, 2001  
25 determination letters. This appeal was bypassed directly to the  
26 Appeals Officer and the appeals were consolidated.

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1 23. The credible and persuasive evidence submitted for  
2 review demonstrates that the claimant was properly given a temporary  
3 modified duty job. The information concerning the job was conveyed  
4 to the claimant by his supervisor. The claimant simply stopped  
5 working, meriting termination.

6 24. The credible and persuasive evidence submitted for  
7 review demonstrates that the modified duty job offered to the claimant  
8 was within his physical limitations and the claimant was not expected  
9 or required to work outside of those restrictions.

10 25. The credible and persuasive evidence submitted for  
11 review demonstrates that the Employer was proper in offered the  
12 claimant a temporary modified duty job and, further, in terminating  
13 benefits when the claimant refused to work in the valid job he was  
14 offered.

15 26. The credible and persuasive evidence submitted for  
16 review demonstrates that the claimant's inability to secure subsequent  
17 work was due only to his termination, not his industrial injury.

18 27. That, if any of the above Findings of Fact are more  
19 appropriately deemed to be Conclusions of Law, they shall be so  
20 deemed.

21 CONCLUSIONS OF LAW

22 1. The issue before this Court in the underlying appeal  
23 relates to the denial of temporary total disability benefits.

24 2. NRS 616C.475(5) provides:

25 Payments for a temporary total disability must  
26 cease when:

27 (a) A physician or chiropractor determines  
28 that the employee is physically capable of any  
gainful employment for which the employee is  
suited, after giving consideration to the  
employee's education, training, and experience;

1 (b) The employer offers the employee light-  
2 duty employment or employment that is modified  
3 according to the limitations or restrictions  
4 imposed by a physician or chiropractor pursuant  
5 to subsection 7; or

6 (c) Except as otherwise provided in NRS 616B.028  
7 and 616B.029, the employee is incarcerated.

8 3. The Nevada Supreme Court held that "[i]n an industrial  
9 injury case, any reasons for an injured employee's discharge which are  
10 unrelated to the injury . . . are relevant only if the evidence shows  
11 that they, rather than the injury, caused the employee's inability to  
12 secure subsequent work." Hudson v. Horseshoe Operating Club, 112 Nev.  
13 446, 916 P.2d 786 (1996).

14 4. In the present case, the evidence is clear and  
15 overwhelming that the claimant's inability to secure subsequent work  
16 was due only to his termination, not his industrial injury.

17 5. The evidence in this matter is clear that the discharge  
18 for cause, not the disability, is the cause of the claimant's wage  
19 loss or inability to obtain work.

20 6. The overwhelming evidence in the record establishes  
21 that the Employer was requesting the claimant to perform modified duty  
22 work that fell within his restriction.

23 7. The credible and persuasive evidence submitted  
24 demonstrates that this information was properly conveyed to the  
25 claimant.

26 8. The credible and persuasive evidence submitted  
27 demonstrates that the claimant failed to work in the valid modified  
28 duty job provided for him, thus terminating his entitlement to  
temporary total disability benefits.

9. The Employer's determinations to deny temporary total  
disability benefits were proper.

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101  
(702) 791-0308 - FAX (702) 791-1912

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10. The Employer's determination relative to overpayment of benefits was proper.

O R D E R

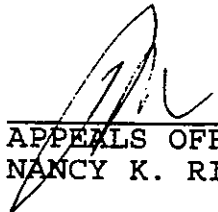
WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the March 23, 2001 Hearing Officer's Decision and Order reversing the Employer's determination to deny temporary total disability benefits is hereby REVERSED;

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the January 24, 2001 determination informing the claimant that his request for temporary total disability benefits was denied, is hereby AFFIRMED;


WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the March 9, 2001 determination informing the claimant that his temporary total disability benefits were suspended due to failure to accept modified duty with his pre-accident Employer, is hereby AFFIRMED;

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the March 9, 2001 determination informing the claimant of an overpayment in the amount of \$693.28, is hereby AFFIRMED.

DATED this 16<sup>th</sup> day of January, 2002.

  
\_\_\_\_\_  
APPEALS OFFICER  
NANCY K. RICHINS, ESQ.

1 Submitted by:  
2 SANTORO, DRIGGS, WALCH,  
3 KEARNEY, JOHNSON & THOMPSON

4   
5 By: DANIEL L. SCHWARTZ, ESQ.  
6 Nevada Bar No. 005125  
7 400 South Fourth Street  
8 Third Floor  
9 Las Vegas, Nevada 89101  
10 Attorney for Employer

11 NOTICE: Pursuant to NRS 233B.130, should any party desire  
12 to appeal this final decision of the Appeals Officer, a  
13 Petition for Judicial Review must be filed with the  
14 District Court within thirty (30) days after service by  
15 mail of this decision.  
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CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Department of Administration, Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing DECISION AND ORDER was duly mailed, postage prepaid OR placed in the appropriate addressee file maintained by the Division, 555 East Washington Avenue, #3300, Las Vegas, Nevada, to the following:

Gerard Z. Costantian, Esq.  
NV. ATT. FOR INJURED WORKERS  
555 East Washington Avenue  
Suite 4800  
Las Vegas, Nevada 89101

Daniel L. Schwartz, Esq.  
SANTORO, DRIGGS, ET AL  
400 South Fourth Street  
Third Floor  
Las Vegas, Nevada 89101

ALINE STEEL  
5725 South Valley View Blvd. #10  
Las Vegas, Nevada 89118

ATILANO BAEZ  
1512 North 21st Street #17  
Las Vegas, Nevada 89101

Jack Schreiner  
S & C CLAIMS SERVICES, INC.  
3380 West Sahara Avenue #120  
Las Vegas, Nevada 89102

DATED this 17<sup>th</sup> day of January, 2002.

  
An employee of the State of Nevada

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101  
(702) 791-0308 - FAX (702) 791-1912

CERTIFICATE OF MAILING

The undersigned, an employee of the State of Nevada, Hearings Division, Department of Administration, does hereby certify that on the date shown below, a true and correct copy of the foregoing ORDER was duly mailed, postage prepaid OR placed in the appropriate addressee runner file at the Department of Administration Hearings Division, 555 East Washington #3300, Las Vegas, Nevada, to the following:

GERARD COSTANTIANESQ  
NAIW  
555 E WASHINGTON AVE 4800  
LAS VEGAS NV 89101

DANIEL L SCHWARTZ ESQ  
SANTORO DRIGGS et al  
400 S FOURTH ST 3RD FLOOR  
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S&C CLAIMS SERVICES INC  
3380 W SAHARA AVE 120  
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ALPINE STEEL  
5725 S VALLEY VIEW BLVD 10  
LAS VEGAS NV 89118

ATILANO BAEZ  
1512 N 21<sup>ST</sup> ST 17  
LAS VEGAS NV 89101

Dated this 24<sup>th</sup> day of January, 2002.

  
\_\_\_\_\_  
Rose Wagner, Legal Secretary II  
Employee of the State of Nevada