

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

TELEPHONE: (702) 385-3801
FACSIMILE: (702) 385-3015
EMAIL: galawfirm@aol.com

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

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

March 23, 2001

VIA HAND DELIVERY

Roger Bremner
Administrator
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
Our File No. : 331-579

Dear Mr. Bremner:

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

On March 12, 2001, one of your Compliance / Audit Investigators, Luisa Carpenelli, issued the attached letter. (Exhibit "A.") Ms. Carpenelli decided that she should take matters into her jurisdiction which clearly are not. I do find it interesting that not one (1) single person from the Division of Industrial Relations was sent a copy of this letter. This is the first time I have ever seen such an action and I question the reason for it.

Since Ms. Carpenelli did not give my client any appeal remedy, I would request either a formal investigation of her actions or a formal hearing on her findings. Unfortunately, Ms. Carpenelli has inadvertently created a quandary. NRS 616D.140 allows for a formal hearing of a decision of the Administrator to impose an administrative fine or benefit penalty. Since neither of these were imposed, it could be argued that this statute is inapplicable. NRS 616D.150 allows any party who is aggrieved by a decision of the administrator to appeal directly to the District Court. This, too, would appear inapplicable. Because Ms. Carpenelli did not send a copy of her findings to the administrator and there is no evidence that the administrator was either involved or agreed with her findings, I am unsure whether I should appeal an apparent rogue finding by an employee who simply is

...

S & C INC
MAR 26 2001

GUGINO & SCHWARTZ

Roger Bremner, Administrator
DIR
Re: Atilano Baez / Alpine Steel
March 23, 2001
Page 2

exceeding her jurisdiction. Under any circumstance, I will await your reply. Obviously, I cannot let the thirty (30) day period for filing a Petition for Judicial Review expire. Therefore, I would appreciate a response within that time period, if possible.

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 Mr. Baez's 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. As the attached indicates, the claimant worked modified / full duty from the date of injury forward. (Exhibit "B.") 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 demanded 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. (Exhibit "C.") 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.

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 should 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?

The actual facts are that the claimant was working modified duty. The claimant was transferred to a field job (working under his father). (Exhibit "D.") Instead of working, he went home. Ms. Carpenelli would have known this if she had performed a complete investigation. Upon stopping work, the claimant wrote to my client and requested the reinstatement of temporary total disability benefits. (Exhibit "E.") The date of this letter was January 18, 2001. As you are aware, my client has a statutory time period to respond to this request. The reason they are given thirty (30) days is to fully investigate the allegations made by the claimant.

...

S & C INC
MAR 26 2001

Roger Bremner, Administrator
DIR
Re: Atilano Baez / Alpine Steel
March 23, 2001
Page 3

As noted above, Ms. Carpenelli "visited" my client on January 23, 2001. Obviously, they still had over three (3) weeks to render their determination to the claimant. Despite this, she used totally unacceptable tactics and actions.

On January 24, 2001, Mr. Baez was issued a determination letter denying temporary total disability benefits from January 4, 2001 to January 18, 2001. (Exhibit "F.") Mr. Baez appealed this determination. (Exhibit "G.") Pursuant to NRS 616D.120(2), Ms. Carpenelli lost "jurisdiction" over this matter at that time. That did not stop Ms. Carpenelli. The hearing on this matter was continued at the claimant's request and a Decision and Order is forthcoming. (Exhibit "H.")

This brings you up to date. Now, with regard to Ms. Carpenelli's letter, I attempted to sort out her statements. These were clearly not reviewed by anyone, as evidenced by the numerous grammatical, typographical and statutory errors. ✓

Ms. Carpenelli bases her entire findings on a factual conclusion that she drew. Obviously, this is improper.

The basis of Ms. Carpenelli's conclusion is that, under NRS 616C.475, the Third-Party Administrator has a duty to assure that temporary modified duty (which does not even have to be provided in writing) must be proper and that the adjuster may try "to ensure safety procedures within OSHA regulations were being implemented." I have reviewed the NRS, the NAC, and all of the Nevada Court Reporters and I cannot find any authority for this finding. Neither NRS 616C.475, nor the NAC's, contain such a holding. I have absolutely no idea what OSHA regulations Ms. Carpenelli is alluding to in her letter.

Since Ms. Carpenelli has no legitimate authority for her position, I request that you (a) retract her letter and (b) formally investigate her actions.

It should be noted that days after Ms. Carpenelli visited my client, I sent a letter to your agency requesting a review of her actions. (Exhibit "I.") To date, the only response I received was the unprofessional findings of Ms. Carpenelli, which was not sent to you, her supervisor, or any other party.

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 the 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.

GUGINO & SCHWARTZ
MAR 26 2001

GUGINO & SCHWARZ

Roger Bremner, Administrator
DIR
Re: Atilano Baez / Alpine Steel
March 23, 2001
Page 4

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
John Wiles, DIR
Charles J. Verre, DIR
Luisa Carpenelli, DIR

S & C INC
MAR 26 2001