

KENNY C. GUINN
Governor

STATE OF NEVADA

ROGER BREMNER
Administrator

SYDNEY H. WICKLIFFE, C.P.A.
Director



CHARLES J. VERRE
Chief Administrative Officer

(702) 486-9080
Fax: (702) 990-0364
(702) 990-0363

DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
INDUSTRIAL INSURANCE REGULATION SECTION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89014

March 12, 2001

Melissa C. Blythe
S & C Claims Services, Inc.
3380 W. Sahara Ave., Suite 120
Las Vegas, NV 89102

Re: Injured Employee: Atilano Baez
Claim Number: SCC0107333
Date of Injury: 09/11/00
Employer: Alpine Steel

Dear Ms. Blythe:

The Division of Industrial Relations (DIR), Industrial Insurance Regulation Section (IIRS) received a complaint from the above-mentioned employee on January 22, 2001, concerning light duty and compensation benefits. After further review of the claim file and the additional information supplied to this agency, a determination has been reached.

FINDINGS OF FACT:

On January 23, 2001, this investigator visited with S & C Claims and obtained copies from Mr. Baez' entire claim file for our review, and the following events were found:

On 09/11/00, Mr. Baez received an injury to his right leg. On the same day, he sought medical treatment at Sunset Quick Care, was diagnosed with a right fibula fracture and referred to Dr. Grondel.

On 09/12/00, Dr. Grondel took Mr. Baez off work until 09/15/00 and then light work of sitting duty only. (Per a scribble note in the file, it appears light duty of sitting only was not available until 09/19/00.)

S & C INC
MAR 14 2001

March 12, 2001

Page 2 of 4

On 09/22/00, Mr. Baez was seen by Dr. Grondel, who took him off work for two weeks.

On 09/22/00, Manager Randall Bulloch sent a letter to your office stating, "Today, Atilano showed up and refused to do the light duty available to him."

On 09/22/00, a report from Michael J. Mills at Alpine steel, stated, "I found Atilano in the detailing room talking to a detailer. I asked him to follow me and told him I had work for him. Upon entering the shop, I realized that he had not followed me. I called to him and asked him to "please get to work, we have some embeds to weld." This is something he can do seated without having to stand or walk. He told me that he just come for his check. I told him that he was not to disrupt our employees and that we did have work for him. He got his check and left."

In a statement written by the injured employee, he explains that on 09/22/00, he presented himself to the Alpine Steel office to pick up his check not to work, because he had an appointment with Dr. Grondel at 12 p.m. However, his bosses insisted that he stay to work. Mr. Baez told them, he was there only to pick up his check and go to his doctor's appointment. He was then told to leave because he was causing problems.

It appears that the letter from Mr. Bulloch failed to mention why did Mr. Baez refused to work, and the report from Mr. Mills does not coincide with Mr. Bulloch's anecdote.

Given the conflicting statements above, it is difficult to believe that Mr. Baez refused to work light duty on 01/04/00, when he had been working light duty since his injury. In Mr. Baez complaint of on 01/18/01, he states that Mr. Castillo told him to report to work in the field. Mr. Baez had restrictions of a sitting job only. When Mr. Baez refused to work in the field, he was rightfully so in refusing. Working in the field did not meet the restrictions imposed by his treating physician.

In your letter of 01/24/01, which is inadequate and not acceptable by the IIRS, you enclosed a copy of a fax memo from Alpine Steel dated 01/09/00 but was not fax to you until 01/23/01 (the date this investigator went to your office to review Mr. Baez' file.) The fax memo states: "On 01/04/01, Atilano Baez was instructed to report to a job out in the field, working at sit-down, light duty job in the field. He refused and went home, putting only 2 hours in at the shop. He has never

S & C INT
MAR 14 2001

March 12, 2001
Page 3 of 4

called in or showed up for work since. Alpine Steel considers him terminated as of 01/04/00, because of no call/no show and insubordination. This memo is signed by Darlene Aurich at Human Resources.

Pursuant to NRS 616C.475, 8 (a), (b) which states in part:

If certification of disability specifies that the physical limitations or restrictions are temporary, the employer of the employee at the time of his accident is not required to comply with NRS 616C.545 to 616C.575, inclusive, and 616C.590 or the regulations adopted by the division governing vocational rehabilitation services if the employer offers the employee a position that:

- (a) Is substantially similar to the employee's position at the time of his injury in relation to the location of the employment and the hours he is required to work; and
- (b) Provides a gross wage that is:
 - (1) If the position is in the same classification of employment, equal to the gross wage the employee was earning at the time of his injury; or
 - (2) If the position is not in the same classification of employment, substantially similar to the gross wage the employee was earning at the time of his injury.

After a complete review of Mr. Baez' claim file, this investigator did not find any indication that the adjuster Ms. Blythe had complied with the above given statute. Mr. Baez' was placed in a sitting job duty only immediately after his injury. There is no correspondence or notes that would indicate the adjuster communicated with the employer concerning the injured employee's light duty position. Also, in fact, a sitting job was going to be provided for Mr. Baez in the field; the file shows no indication from the adjuster trying to insure safety procedures within OSHA regulations were being implemented, given that he did sustain a fracture to his right leg, and to follow the regulations as established by the NRS 616C.475.

DETERMINATION:

Based on the above Findings Of Facts, it is the determination of the IIRS to find S & C Claims Services, Inc., in violation of the NRS 616C.475, 8 (a) and (b). The violation requires a written response from the insurer with supporting documentation. Any responses that do not completely or adequately address the discrepancies will be considered invalid and administrative action may be taken pursuant to the relevant provisions of Chapters 161 and 617 of the NRS OR NAC.

S & C INC
MAR 14 2001

March 12, 2001
Page 4 of 4

NOTICE OF CORRECTION: NO1-LV00075

Pursuant to NRS 616D.120, 2 (a), The Administrator hereby orders S & C Claims Services, Inc. to correct the violation pursuant to NRS 616C.475 by paying Mr. Baez, the injured employee, temporary total disability benefits from 01/04/01 to 01/18/01 for failing to comply with NRS 616C.475, 8 (a) and (b).

PLAN OF CORRECTION: PO1-LV00010

Pursuant to NRS 616D. 120, 2 (c) The Administrator hereby orders S & C Claims Services, Inc. to submit a written plan of corrective action which address the above violation, no later than thirty (30) days after the date of this order is received. The plan of corrective action must include written documentation of the specific policies and procedures, which will be implemented together with copies of the same to insure violations of this type, do not occur again.

If you have any further questions, feel free to contact me.

Sincerely,



Luisa Carpenelli
Compliance/Audit Investigator
Industrial Insurance Regulation Section

cc: Jill Crowley
file

S & C INC
MAR 14 2001