

FILED
FEB 12 2002
APPEALS OFFICE

NEVADA DEPARTMENT OF ADMINISTRATION
BEFORE THE APPEALS OFFICER

1	In the Matter of the Contested)	Claim No: SCC0107349
2	Industrial Insurance Claim)	
3	of)	Appeal No: LAS2002-C-105-PL
4	ATILANO BAEZ)	Employer:
5	1512 No. 21 ST Street #17)	ALPINE STEEL
6	Las Vegas, NV 89101)	5725 So. Valley View Blvd. #10
7	Claimant.)	Las Vegas, NV 89118
8)	

DECISION AND ORDER

This matter came regularly for hearing on November 27 2001, pursuant to NRS Chapters 616A to 616D, inclusive, 617 and 233B. The claimant, ATILANO BAEZ, was present and was represented by his attorney, GERARD Z. COSTANTIAN, 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" - 13 pp.
- Claimant's "1" - 14 pp.
- Claimant's "2" - 7 pp.
- Claimant's "3" - 1 pp.
- Claimant's "4" - 1 pp.

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

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1 FINDINGS OF FACT

2 1. On January 4, 2001, the claimant, Atilano Baez, a one
3 time welder at Alpine Steel, alleges he sustained an industrial injury
4 in the course and scope of his employment. According to the claimant
5 his condition was due to "moving some angles". The claimant completed
6 his C4 form on April 23, 2001. An injury to the knee and lower back
7 was alleged. When asked when he reported the alleged injury, the
8 claimant left the question blank.

9 2. The claimant was initially seen by R.J. Grondel, M.D.
10 on February 9, 2001. Despite, this, the C4 form was not completed
11 until April 23, 2001. It should be noted that Dr. Grondel is treating
12 the claimant for an accepted knee injury claim. The accepted claim
13 is currently in litigation. Dr. Grondel diagnosed a possible
14 herniated disc of the lower thoracic or upper lumbar spine. Thus, the
15 claimant's contentions are that he possibly herniated a disc on
16 January 4, 2001, failed to seek medical attention until February 9,
17 2001 and failed to file a claim until April 23, 2001, all the time
18 with such a severe injury.

19 3. The Employer completed a statement on February 14,
20 2001. According to the statement, the claimant was warned about his
21 behavior on multiple occasions. On January 4, 2001, the alleged date
22 of injury, the claimant was advised to return to work or go home. He
23 left and did not return. No mention was made of an alleged injury.
24 The claimant was terminated.

25 4. A statement was obtained from the shop foreman
26 confirming that the claimant did not mention any alleged injury on
27 January 4, 2001.

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1 5. The Employer completed its C3 form on May 4, 2001.
2 Validity of the claim was doubted.

3 6. The shop foreman issued second statement on May 8,
4 2001. The foreman confirmed that the claimant was not lifting any
5 heavy objects on the date of the alleged injury. In fact, the
6 claimant was working under the supervision of his son. The shop
7 production manager echoed this statement.

8 7. On May, 25, 2001, the Employer advised the claimant
9 that his claim was denied. The claimant was properly advised of his
10 right to appeal the determination. The claimant filed for a hearing.

11 8. Following a hearing before Hearing Officer Steven
12 Evans, a Decision and Order was entered on June 29, 2001 affirming the
13 Employer's determination. The claimant timely appealed to the Appeals
14 Officer.

15 9. The credible and persuasive evidence submitted fails
16 to excuse the late filing of the Notice of Injury and Claim based upon
17 unawareness of the reporting requirements. The evidence submitted
18 clearly shows that the claimant was aware of the reporting
19 requirements at the time of his alleged injury.

20 10. There is no question that this claim was untimely
21 filed.

22 11. After a complete review of the evidence presented, the
23 credible and persuasive evidence demonstrates that none of the
24 provisions excusing untimely filing are applicable to this case.

25 12. The credible and persuasive evidence fails to show that
26 the untimely claim filing should be excused.

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1 6. Under NRS 616C.150(1), the claimant has the burden of
2 proof to show that the injury arose out of and in the course and scope
3 of his employment. The claimant must satisfy this burden by a
4 preponderance of the evidence. Further, NRS 616B.612 mandates that
5 an employee is only entitled to compensation if he is injured in the
6 course and scope of his employment.

7 7. The credible and persuasive evidence submitted for
8 review fails to demonstrate that the claimant's condition arose out
9 of an in the course of his employment.

10 8. NRS 616A.030 defines an accident as an unexpected or
11 unforeseen event happening suddenly and violently, with or without
12 human fault, and producing at the time objective symptoms of an
13 injury.

14 9. NRS 616A.265 now defines "injury" or "personal injury"
15 to mean a sudden and tangible happening of a traumatic nature,
16 producing an immediate or prompt result which is established by
17 medical evidence.

18 10. The credible and persuasive evidence submitted for
19 review fails to demonstrate that the claimant sustained an "accident"
20 or "injury" as defined by the NRS.

21 11. The Employer's determination to deny the claim was
22 proper.

23 ORDER

24 WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the June
25 29, 2001 Hearing Officer's Decision and Order affirming the Employer's
26 determination to deny the claim is hereby AFFIRMED;

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WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
the May 25, 2001 determination informing the claimant that his claim
was denied, is hereby AFFIRMED.

DATED this 12th day of February, 2002.



APPEALS OFFICER
PAUL LYCHEUK, ESQ.

Submitted by:

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON,



By: DANIEL L. SCHWARTZ, ESQ.
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Attorney for Employer

NOTICE: Pursuant to NRS 233B.130, should any party desire
to appeal this final decision of the Appeals Officer, a
Petition for Judicial Review must be filed with the
District Court within thirty (30) days after service by
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.
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Jack Schreiner
S & C CLAIMS SERVICES, INC.
3380 West Sahara Avenue #120
Las Vegas, Nevada 89102

DATED this 12th day of February, 2002.

Maurin Stevens
An employee of the State of Nevada

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