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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

VICKI LEWIS,)
)
 Appellant,)
)
 vs.)
)
 THE NORTH DAKOTA WORKERS)
 COMPENSATION BUREAU AND)
 INVESTMENT CENTERS OF)
 AMERICA,)
)
 Appellees.)
 _____)

SUPREME COURT NO. 990300

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JAN 18 2000

STATE OF NORTH DAKOTA

REQUESTED RECONSIDERATION OF THE SUPREME COURT'S
ORDER ENTERED ON NOVEMBER 10, 1999

APPELLANT'S REPLY BRIEF

DIETZ, LITTLE & HAAS

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Workers compensation is an exclusive remedy intended to provide "sure and certain relief." See: N.D.C.C., Section 65-01-01. The Bureau now concedes that Vicki Lewis suffered a compensable injury (App. 87-90). Consequently, she is entitled to the "sure and certain relief" guaranteed by statute. Any derogation of rights otherwise available in courts of law should be construed narrowly. N.D.C.C., Section 28-32-19 allows appeals of administrative agency decisions which violate the law, violate constitutional rights, or violate the provisions of Chapter 28-32. In the instant case, the Bureau's ex parte communications deprived Vicki Lewis of constitutional due process, violated the standard this Court set in Scott v. North Dakota Workers Compensation Bureau, 1998 ND 221, 587 N.W.2d 153, and violated the requirements of Chapter 28-32. There is simply no reason to deny workers compensation claimants the same right of review available to all other civil litigants. At the same time, there is no reason to insulate the Bureau from the consequences of its illegal acts.

In the instant case, the Bureau engaged in improper ex parte communications, changing the decision of the administrative law judge and significantly affecting Vicki Lewis' entitlement to benefits, and failed to disclose those communications as required by N.D.C.C., Section 28-32-17 and confirmed by this Court's decision in Scott, supra, until ordered to do so by the District Court. The Bureau not only failed to affirmatively comply with this Court's decision in Scott, supra, it actually refused to do so until ordered by the District Court.

The District Court denied Ms. Lewis' motion for Rule 60(b) relief on the basis of an impossible standard. Clearly, without evidence of constitutional violations or without a finding that such violations are "systemic," no attorney is simply going to assume that constitutional violations are occurring and include those speculative violations as issues on appeal. After this Court issued its decision in Scott, supra, and after the Bureau had refused to voluntarily disclose its ex parte communications, Ms. Lewis moved for Rule 60(b) relief -- the only relief available to her. Given this Court's direction to claimant's counsel to identify issues with specificity (See: Dean v. North Dakota Workers Compensation Bureau, 554 N.W.2d 455 (N.D. 1996) and Vetter v. North Dakota Workers Compensation Bureau, 554 N.W.2d 451 (N.D. 1996)), it makes little sense for counsel to include a laundry list of every possible constitutional violation in the paranoid expectation that some of the allegations might bear fruit. This Court has warned claimant's counsel not to submit the sort of "boiler-plate" specifications of error that the District Court and the Bureau say were required in the instant case. Clearly, Ms. Lewis could not have reasonably included the Bureau's ex parte communications as an issue on appeal until she either became aware that such communications had occurred or that such communications were systemic. The District Court's denial of Ms. Lewis' motion for Rule 60(b) relief, because she had failed to raise the issue of ex parte communications in her specifications of error, was an abuse of discretion.

In the instant case, the Bureau denied Vicki Lewis disability benefits based on ex parte communications and without identifying her entitlement to disability benefits as an issue. The Bureau's actions violate both statutory and constitutional guarantees of fairness. The Bureau quite naturally wishes to avoid review of its actions. It is left, then, to this Court to ensure that claimants before the Workers Compensation Bureau receive fair consideration.

Respectfully submitted this 19th day of January, 2000.

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CERTIFICATE OF SERVICE

I, Stephen D. Little, certify that on the 12th day of January, 2000,
a true and correct copy of the Appellant's Reply Brief were mailed to
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