

THE SUPREME COURT

STATE OF NORTH DAKOTA

BRIAN BROWN)	WARD COUNTY
)	NORTH CENTRAL JUDICIAL DISTRICT
)	
APPELLANT,)	SUPREME COURT NO. 20170083
)	CIVIL NO.: 51-2016-CV-01293
vs.)	
)	
NORTH DAKOTA)	
WORKFORCE SAFETY INSURANCE)	
FUND,)	
APPELLEE.)	

APPEAL FROM DISTRICT COURT JUDGMENT ENTERED JANUARY 17, 2017, WITH
NOTICE OF ENTRY OF JUDGMENT SERVED JANUARY 18, 2017, AND ORDER
AFFIRMING ADMINISTRATIVE DECISION DATED JANUARY 14, 2017.

COUNTY OF WARD
SOUTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE GARY H. LEE

APPELLANT'S REPLY BRIEF

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1] The Appellant, Brian Brown, offers this short reply brief. WSI argues that Brown was obligated to comply with the terms of the Amended Stipulation while the noncompliance issue set out in the Notice of Intention to Discontinue/Reduce Benefits (NOID) was proceeding to hearing. WSI neglected to point out that Brown was doing everything in his power to comply with the terms of the Amended Stipulation when WSI pulled the funding of the rehabilitation program, preventing him from continuing in his chosen program and stopping the vocational rehabilitation process in its tracks. Furthermore, WSI continues to treat Brown's inability to finish the rehabilitation program by the date agreed upon as intentional noncompliance, holding him strictly liable for matters outside his control. As stated in Appellant's main brief, impossibility of performance is not intentional noncompliance. WSI ignores the fact that Brown's academic decision-making was "dictated by circumstances and based on advice of school advisors" exactly as envisioned by the Amended Stipulation. (App. 215).

2] WSI's NOID, dated August 20, 2015, asserted that Brown was in noncompliance for withdrawing from two Summer courses with the approval of his academic advisor. In order to come back into compliance, the NOID required him to register for the (Summer) classes and attend those classes within thirty days after September 10, 2015 (App. 39). The Fall semester began on August 24, 2015 (Supp. App. 225/ROA 67). Obviously, Brown could not have registered for and attended classes if they were not being offered. There was simply no evidence adduced that it was possible for Brown to register for and attend the Summer classes once the Fall semester had begun.

3] Brown has maintained throughout these proceedings that, if he failed to complete his chosen program by December 23, 2016, WSI would cease funding his program and he would be responsible to fund it himself. Although WSI disputes Brown's interpretation of the Amended Stipulation, Vicki Betz, WSI's School Coordinator, memorialized a telephone conversation with

Mr. Brown's Academic Advisor, Mary Sennert on September 21, 2015, stating that, "It was noted out (sic) deadline for funding is 12/2016 regardless of his completion of any degree" (Supp. App. 231/ROA 72). Thus, Ms. Betz's understanding of WSI's funding responsibilities was the same as that of Brown: if he was unable to complete the agreed-upon program by the agreed-upon date, WSI would cease funding the program after December 23, 2017. Similarly, WSI has asserted that Brown never communicated the technological issues he was having with WSI. In truth, Mary Sennert emailed Vicki Betz on November 2, 2015, "Just an update. I met with Brian Brown on Oct 28, 2015 and helped him withdraw from CAD 211 and GIS 105. He was having some technology issues with his computer and got too far behind in his classes to catch up. We mapped out the remaining classes for him to take to graduate" (Id).

4] In conclusion, Brian Brown's understanding of the requirements of the Amended Stipulation was correct. Vicki Betz admitted as much. Brown complied with the terms of that Amended Stipulation to the best of his ability until WSI's withdrawal of funding made further compliance altogether impossible. Brown again requests that WSI's Order be reversed and that he be allowed to return to the vocational rehabilitation program to which he and WSI stipulated.

5] Respectfully Submitted this 23rd day of May, 2017.

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