

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Jack Robinson,)	
)	Supreme Court Case No. 20180383
Appellant,)	Burleigh County District Court
)	Case No. 08-2018-CV-01061
vs.)	
)	
North Dakota Workforce Safety)	
and Insurance,)	
)	
Appellee,)	
_____)	

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BRIEF OF APPELLEE NORTH DAKOTA
WORKFORCE SAFETY AND INSURANCE

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APPEAL FROM DISTRICT COURT JUDGMENT DATED
AUGUST 24, 2018, ENTERED FOLLOWING ORDER AFFIRMING
HEARING OFFICER'S DECISION DATED AUGUST 21, 2018
BURLEIGH COUNTY DISTRICT COURT
CIVIL NO. 08-2018-CV-01061
SOUTH CENTRAL JUDICIAL DISTRICT
THE HONORABLE THOMAS SCHNEIDER

+++++

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TABLE OF CONTENTS

	<u>Paragraph No.</u>
I. Statement of the Issues	1
II. Statement of the Case	3
III. Statement of Facts.....	9
IV. Law and Argument.....	17
A. Scope of Review on Appeal	17
B. WSI Complied with the Statutory Requirements for Initiating The Administrative Action against Robinson by Serving its Administrative Order of March 30, 2017, on Counsel for Robinson.....	18
C. Robinson was Accorded Due Process to Challenge WSI's Decision on Personal Liability and Premium Calculation	33
V. Conclusion.....	36

TABLE OF AUTHORITIES

CASES

Paragraph No.

<u>Auck v. North Dakota Workforce Safety and Ins.,</u> 2010 ND 126, 785 N.W.2d 186.....	17
<u>Bishop v. North Dakota Workforce Safety and Ins.,</u> 2012 ND 217, 823 N.W.2d 257.....	17
<u>Carlson v. Workforce Safety and Insurance,</u> 2009 ND 27, 765 N.W.2d 691.....	27, 29
<u>First Union Nat'l Bank v. RPB 2, LLC,</u> 2004 ND 29, 674 N.W.2d 1.....	26
<u>Haggard v. Meier,</u> 368 N.W.2d 539 (N.D. 1985).....	26
<u>Holbach v. Dixon,</u> 2007 ND 60, 730 N.W.2d 613.....	33
<u>Inwards v. Workforce Safety and Insurance,</u> 2014 ND 163, 851 N.W.2d 693.....	25
<u>Johnson v. Nodak Mut. Ins. Co.,</u> 2004 ND 293, 699 N.W.2d 45.....	30
<u>Johnson v. North Dakota Workers' Comp. Bureau,</u> 539 N.W.2d 295 (N.D. 1995).....	26
<u>Larsen v. North Dakota Department of Transportation,</u> 2005 ND 51, 693 N.W.2d 39.....	26
<u>Mid-Dakota Clinic, P.C. v. Kolsrud,</u> 1999 ND 244, 603 N.W.2d 475.....	25
<u>Paul v. North Dakota Workers Compensation Bureau,</u> 2002 ND 96, 644 N.W.2d 884.....	17
<u>Reliance Ins. Co. v. Public Service Commission,</u> 250 N.W.2d 918 (N.D. 1977).....	25

<u>Rojas v. Workforce Safety & Ins.,</u> 2005 ND 147, 703 N.W.2d 299.....	34
<u>Selzler v. Selzler,</u> 2001 ND 138, 631 N.W.2d 564.....	26
<u>Sloan v. N.D. Workforce Safety and Ins.,</u> 2011 ND 194, 804 N.W.2d 184.....	17
<u>State v. Haibeck,</u> 2006 ND 100, 714 N.W.2d 52.....	29
<u>State v. Noack,</u> 2007 ND 82, 732 N.W.2d 389.....	29

STATUTES

Chapter 28-32.....	22, 31
N.D.C.C. § 28-32-21	22, 30
N.D.C.C. § 28-32-21(1).....	30
N.D.C.C. § 28-32-21(1)(b)	30
N.D.C.C. § 28-32-21(3)	32
N.D.C.C. § 28-32-21(3)(a)	30
N.D.C.C. § 28-32-21(3)(c)	31, 32
N.D.C.C. § 28-32-46.....	17
N.D.C.C. § 64-04-32(1)	23
N.D.C.C. § 64-04-32(3)	20, 23, 27, 29, 33
N.D.C.C. § 65-02-22.1.....	17
N.D.C.C. § 65-04-04.4.....	22
N.D.C.C. § 65-04-22.1.....	32
N.D.C.C. § 65-04-26.1.....	11, 13, 35
N.D.C.C. § 65-04-32.....	19, 22, 24, 30

N.D.C.C. § 65-04-32(1)	20, 29
N.D.C.C. § 65-04-32(4)	31
N.D.C.C. § 65-04-32(5)	31
N.D.C.C. § 65-05-07.2.....	35

COURT RULES

N.D.R.Civ.P. 4	25, 26, 27, 29, 30
N.D.R.Civ.P. 5	25, 26
N.D.R.Civ.P. 5(b)(2)(A).....	22
N.D.R.Civ.P. 81(b).....	22

STATEMENT OF THE ISSUES

[1] Whether the administrative action initiated by WSI by service of its Administrative Order of March 30, 2017, on Robinson's counsel, following dismissal without prejudice of a District Court collection action, comported with statutory requirements.

[2] Whether Robinson was accorded due process to challenge WSI's decision in its Administrative Order holding him personally liable for unpaid premiums of Dalton Logistics, Inc.

STATEMENT OF THE CASE

[3] In August of 2015, WSI commenced a civil action in District Court, Burleigh County, seeking collection of amounts due on an existing employer account of Dalton Logistics, Inc. from Appellant Jack Robinson, individually, an officer of that corporation. (Appx.¹ 6-8; C.R.² 8-9) Robinson responded to the case by filing an Answer, pro se. (Appx. 9-15) Robinson was assisted in that action initially by counsel from Texas. (Appx. 16) In his Answer, Robinson admitted he was an officer of Dalton Logistics, Inc. (Appx. 10) Robinson disputed he received a Notice of Decision issued in June of 2015 regarding his personal liability for the premiums. (Appx. 11) Robinson also disputed the amount of the calculated premiums due by WSI. (Appx. 10)

[4] In November of 2015, WSI filed a Motion for Summary Judgment asking the Court to conclude that Robinson was personally liable for the

¹ "Appx." refers to the Appendix submitted by Appellant in this Appeal.

² "C.R." refers to the Certificate of Record on Appeal to District Court dated June 15, 2018.

premiums of Dalton Logistics, Inc. based on an the unappealed June 2015 Notice of Decision regarding personal liability and the amount of premiums due as calculated by WSI. (C.R. 19-36) North Dakota counsel made an appearance on behalf of Robinson in that action after WSI filed its Motion for Summary Judgment. (C.R. 10-11) Robinson then responded to the Motion. (C.R. 47-96)

[5] The District Court found there were issues of fact relating to personal liability and the amount of calculated premiums. (C.R. 97-99) WSI then conducted discovery (C.R. 100-105). Thereafter, WSI filed a Motion for Partial Summary Judgment on the issue of personal liability inasmuch as there was no dispute based on the admissions in discovery that Robinson would be personally liable as an officer of Dalton Logistics. (C.R. 106-124) As to the amount of premiums due, there remained a question of fact and WSI did not renew its Motion for Summary Judgment on the issue of the amount of premiums. Robinson again contested WSI's Motion on the personal liability issue. (C.R. 125-143) Thereafter, the parties agreed to dismiss the District Court action without prejudice and to provide an appealable order in which to litigate the premium calculation and personal liability issue. See Appx. 31. The pending District Court collection action was then dismissed without prejudice. (C.R. 144-146; Appx. 17)

[6] On March 30, 2017, WSI issued an Administrative Order regarding the amount due on the Dalton Logistics, Inc. account and finding Robinson personally liable for those amounts. (Appx. 18-34; C.R. 164) The Order was served on counsel who had appeared for Robinson relating to the issues, via

certified mail. (Appx. 163; C.R. 164) A Request for Hearing was submitted by counsel on behalf of Robinson to WSI's March 30, 2017 Order. (Appx. 36-37)

[7] An administrative hearing was scheduled and held on January 25, 2018. (Appx. 38; C.R. 263) Robinson did not appear at the administrative hearing and although given an opportunity to do so at a later date, "elected not to testify." (C.R. 283) Robinson called no witnesses to testify at the hearing and offered no hearing exhibits. Following the hearing, on March 18, 2018, the Administrative Law Judge issued Findings of Fact, Conclusions of Law and Order affirming WSI's March 30, 2017, Order. (Appx. 52-61)

[8] Robinson filed an appeal from the March 18, 2018, ALJ decision to the District Court, Burleigh County. (Appx. 62-64) Following submission of the record and briefing, the District Court issued its Order Affirming Hearing Officer's Decision on August 21, 2018. (Appx. 90-96) Robinson then filed this appeal. (Appx. 102-104)

STATEMENT OF FACTS

[9] On April of 2011, Dalton Logistics, Inc. submitted an application for coverage with WSI. (C.R. 183-185) WSI opened the employer account and it was assigned Account No. 1296484. (C.R. 182-183) The initial payroll period identified for the account was 4-12-2011 to 3-31-2012. (C.R. 183)

[10] A premium audit was conducted on the account in November of 2011. (C.R. 181-182) Rather than the initial reported 14 estimated employees working in North Dakota, the audit found actual payroll totals of 40 employees. (C.R. 181) This resulted in additional premium due "to eliminate the company

from having a large amount of additional premium due at the end of their reporting period.” (C.R. 181) A further audit was conducted in November of 2012. (C.R. 186-203) The audit resulted in an additional adjustment of premium for the initial reporting period of \$13,603.99. (C.R. 202-203) Dalton Logistics was issued a Notice of Decision regarding this change in premium. (C.R. 202) During that audit, Dalton Logistics identified Appellant Jack Robinson as an officer of the corporation. (C.R. 187)

[11] In March of 2015, Dalton Logistics was notified that its account had been referred to collection because of an outstanding balance. (C.R. 204) It was also notified that nonpayment of premium may result in personal liability of corporate officers/directors/partners, specifically Robinson, pursuant to N.D.C.C. § 65-04-26.1. (C.R. 204) The other corporate officer, Richard Meredith, received the same notice from WSI. (C.R. 205)

[12] The payroll report for the policy period 4-1-2014 to 3-31-2015 was not timely submitted by Dalton Logistics to WSI. (C.R. 206-213) In response to notices from the collections department, an attorney from Sugar Lane, Texas, Richard Brown, contacted Ryan Steifel at WSI regarding the account. (C.R. 175, 214, 269) It was reported that Dalton Logistics had stopped having workers in North Dakota in January of 2015. (C.R. 175, 270) Steifel explained how WSI had arrived at the billings for Dalton Logistics for the periods 2013-2014 and the advance estimated wages for the 14-15 billing period that they were awaiting a payroll report for. (C.R. 175, 270) Steifel supplied a payroll report and asked

that it be completed and returned with actual wages for the workers through January of 2015. (C.R. 175, 270-271)

[13] On June 17, 2015, Steifel issued a Notice of Decision to both corporate officers on the Dalton Logistics account, advising them of personal liability under N.D.C.C. § 65-04-26.1. (C.R. 2-3) No response was received to these Notices of Decision.

[14] On July 15, 2015, Dalton Logistics submitted its Employer Payroll Report for the period 4-1-2014 to 3-31-2015. (C.R. 215-219; 271) This provided the information from which WSI could do the final reconciliation of the account. (C.R. 271) Dalton Logistics noted on that payroll report that it wanted to close the account. (C.R. 215) The report also again confirmed that Robinson was an officer of the corporation, and had been since 2012. (C.R. 215)

[15] WSI then prepared a reconciliation of the payroll period 4-1-2014 to 3-31-2015 based payroll information supplied by Dalton Logistics. (C.R. 242-243) The reconciliation for that period resulted in additional premium due of \$109,449.02. (C.R. 242-243; 275-276) Combining that with the balance on the account of \$25,078.06, resulted in an ending amount due on the account of \$134,527.08. (C.R. 242; 276) No amounts were paid on the account after the reconciliation was performed in July of 2015 and the account closed. (C.R. 276)

[16] WSI then initiated the legal proceedings outlined above in the Statement of the Case.

LAW AND ARGUMENT

A. SCOPE OF REVIEW ON APPEAL.

[17] On appeal, this Court reviews the decision of the ALJ, “although the district court’s analysis is entitled to respect.” Paul v. North Dakota Workers Compensation Bureau, 2002 ND 96 ¶ 6, 644 N.W.2d 884. The scope of review of an independent administrative law judge decision is set out in N.D.C.C. § 28-32-46. Bishop v. North Dakota Workforce Safety and Ins., 2012 ND 217, 823 N.W.2d 257. “When an independent ALJ issues final findings of fact, conclusions of law and order under N.D.C.C. § 65-02-22.1, courts apply the same deferential standard of review to the ALJ's factual findings as used for agency decisions.” Id. at ¶ 5 (citing Sloan v. N.D. Workforce Safety and Ins., 2011 ND 194 ¶ 5, 804 N.W.2d 184; Auck v. North Dakota Workforce Safety and Ins., 2010 ND 126 ¶ 9, 785 N.W.2d 186). However, no deference is given to an ALJ’s legal conclusions, and questions of law are fully reviewable on appeal. Id. at ¶ 6; Sloan, at ¶ 5; Auck, at ¶ 9, emphasis supplied.

B. WSI COMPLIED WITH THE STATUTORY REQUIREMENTS FOR INITIATING THE ADMINISTRATIVE ACTION AGAINST ROBINSON BY SERVING ITS ADMINISTRATIVE ORDER OF MARCH 30, 2017, ON COUNSEL FOR ROBINSON.

[18] As WSI’s Administrative Order provided, the collection action WSI had initiated in August of 2015 in District Court against Robinson was dismissed without prejudice because it was agreed to provide a means for Robinson to litigate the premium calculation of WSI relating to Dalton Logistics, Inc. and his personal liability for those premiums. (Appx. 31) Even though it was disputed that Robinson received a copy of the Notice of Decision issued by WSI regarding

his personal liability (C.R. 3), Robinson was aware of WSI's position and its premium calculations based on service of the Summons and Complaint in the collection action which was personally served upon him. (Appx. 6-8; C.R. 8-9) Thus, WSI proceeded to issue an Administrative Order rather than re-issue a Notice of Decision regarding the personal liability and premium calculations.

[19] After WSI issued its Administrative Order of March 30, 2017 (Appx. 18-34; C.R. 164), a Request for Hearing was submitted by Robinson. (Appx. 35-37) In that Request for Hearing, Robinson asserted that he had not been properly served with a notice of decision. (Appx. 165, emphasis supplied.) Robinson cited N.D.C.C. § 65-04-32 as requiring WSI "serve notice of the decision on the parties by regular mail." (Appx. 35, emphasis supplied) It was asserted that counsel for Robinson had not been authorized to accept service on behalf of Robinson, and therefore, WSI did not comply with the statute and acquire personal jurisdiction over Robinson. (Appx. 35-36). The other arguments advanced by Robinson in the Request for Hearing related to calculation of the premiums due and that he should not be held personally liable for those premiums, the issues for which it was agreed Robinson should have the opportunity to litigate by WSI issuing its Administrative Order. (Appx. 31, 36-37)

[20] At the hearing, counsel for Robinson argued that service of a notice of decision on Robinson was required under N.D.C.C. § 65-04-32(1). (Appx. 45)

That statute provides:

The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall

include with the decision a notice of the employer's right to reconsideration.

N.D.C.C. § 64-04-32(1). WSI responded to that argument noting there is a difference between an informal notice of decision issued under N.D.C.C. § 65-04-32(1) and an Administrative Order under N.D.C.C. § 65-04-32(3) which is what WSI issued to initiate the administrative action against Robinson. (Appx. 46) WSI noted that the proceedings were not initiated by a notice of decision but instead an Administrative Order. (Id.) Under N.D.C.C. § 64-04-32(3) WSI "may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration." (See Appx. 46-47) Based on the arguments that were advanced at the hearing, the ALJ in Conclusion of Law #3 from the Findings of Fact, Conclusions of Law and Order agreed with WSI's arguments and therefore denied the Motion to dismiss the action as a matter of law. (Appx. 60) That was the extent of the arguments made on behalf of Robinson at the hearing.

[21] In Robinson's appeal to the District Court, his specification of error was that the "hearing officer erred as a matter of law in concluding that WSI could continue formal administrative proceedings against Jack Robinson without having served or mailed notice of WSI's decision of WSI's personal liability to Jack Robinson prior to such proceedings." (Appx. 62-63) Alternatively, Robinson asserted that "valid service of process is necessary in order for WSI to assert personal jurisdiction, and such process has not been carried out." (Appx. 63) Robinson also asserted due process rights were violated by finding him

personally liable for WSI premiums when he had no control or involvement in the process. (Appx. 63)

[22] At the District Court level, Robinson then argued that N.D.C.C. § 28-32-21 set forth the procedural rules that must be followed in the proceeding. (Appx. 67) He further argued that WSI must serve the Administrative Order on Robinson personally, and could not serve the same on his counsel. (Appx. 68-69) The District Court rejected Robinson's arguments, concluding as follows:

[¶10] First, Robinson argues the Hearing Officer erred as a matter of law in concluding that WSI could continue formal administrative proceedings against Robinson without having served or mailed notice of WSI's decision of personal liability to Robinson prior to the proceedings.

[¶11] Generally, the Rules of Civil Procedure govern procedures relating to appeals to the district court from decisions of administrative agencies. N.D.R.Civ.P. Rule 81(b). If the statutory provisions are inconsistent with the Rules, however, the statute governs. *Id.* Section 65-04-32 of the North Dakota Century Codes governs disputed decisions by organizations and states in pertinent part:

Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the organization issues a decision under this chapter or section 65-04-04.4:

1. The organization may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The organization shall include with the decision a notice of the employer's right to reconsideration.

3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the organization shall serve on the parties by certified mail an administrative order

including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration. *The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.*

N.D.C.C. § 65-04-32 (emphasis added). “If a party is represented by an attorney, service under [Rule 5 of the North Dakota Rules of Civil Procedure] must be made on the attorney unless the court orders service on the party.” N.D.R.Civ.P. Rule 5(b)(2)(A).

[¶12] Here, the Rules of Civil Procedure are not inconsistent with the provisions of Section 65-04-32 of the North Dakota Century Code. Section 65-04-32 dictates that the organization, in this case WSI, may serve an administrative order on any decision made by informal internal review. Rule 5(b)(2)(A) of the North Dakota Rules of Civil Procedure dictates that if a party is represented by an attorney, then service must be made on the attorney, unless the court orders service on the party. The court has not ordered service on the party. Therefore, WSI was in compliance with the statutory provisions and Rules of Civil Procedure when it mailed the “Administrative Order” to Attorney Grant, who represented Robinson in the prior district court action and represents who represents Robinson in the appeal currently before the Court.

(Appx. 93-95)

[23] When WSI makes a decision relating to an issue pertaining to liability for premiums under Title 65-04, N.D.C.C. § 65-04-32(3) provides that WSI shall serve an administrative order “by certified mail” including findings of fact, conclusions of law and order.” WSI may do so after issuing a Notice of Decision under 64-04-32(1) or may issue such Order without first issuing a Notice of Decision. N.D.C.C. § 65-04-32(3) provides only that the administrative order issued by WSI is to be served via certified mail. The Affidavit of Mailing that accompanies the Administrative Order issued by WSI on March 30, 2017, confirmed it was mailed, via certified mail. (Appx. 34; see also C.R. 164)

[24] Robinson argues that N.D.C.C. § 65-04-32 requires that WSI serve the Administrative Order on Robinson by certified mail, not his attorney. The statute does not so specify. The plain language reflects that the organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration. The statute only requires that it be served on all parties by certified mail. The statute does not specify that it must be served via the Rules of Civil Procedure, or that it must be served on the individual or employer that is the subject of the decision or Order. Likewise, it does not specify that the Administrative Order may not be served on an attorney who has appeared on behalf of the individual or business in connection with the matter before the organization.

[25] Robinson is critical of the District Court's analysis that WSI's service of its Administrative Order was appropriate under Rule 5 of the North Dakota Rules of Civil Procedure. However, this Court has held that while Rule 4 of the Rules of Civil Procedure governs service of process, generally meaning service of a Summons and Complaint, Rule 5 governs service of papers other than process. Inwards v. Workforce Safety and Insurance, 2014 ND 163 ¶ 9, 851 N.W.2d 693, 697; see also Reliance Ins. Co. v. Public Service Commission, 250 N.W.2d 918, 921 (N.D. 1977); Mid-Dakota Clinic, P.C. v. Kolsrud, 1999 ND 244 ¶ 18, 603 N.W.2d 475 (discussing difference in service requirements under Rule 4 and Rule 5 of the Rules of Civil Procedure).

[26] While Robinson asserts based on a definition of "process" from Black's Law Dictionary that Rule 4 service of WSI's Administrative Order was

required, he cites no legal authority from this Court or otherwise for that proposition. As outlined above, this Court has consistently held that Rule 4 of the Rules of Civil Procedure governs service of process for a Summons and Complaint. Rule 5 of the Rules of Civil Procedure governs service of papers other than service of the Summons and Complaint. If the Legislature believed that service of an Administrative Order issued by WSI must be served on the individual or business via Rule 4, it could have specifically so stated. Instead, it simply provided that service could be made by certified mail. In construing statutes, this Court has held that it "will not add words or additional meaning to a statute." First Union Nat'l Bank v. RPB 2, LLC, 2004 ND 29, ¶ 17, 674 N.W.2d 1; see also Haggard v. Meier, 368 N.W.2d 539, 541 (N.D. 1985). In Larsen v. North Dakota Department of Transportation, 2005 ND 51, 693 N.W.2d 39, this Court held that, when construing statutes, it "cannot ignore the plain language of the statute under the pretext of pursuing some unexpressed legislative intent, nor can we add words or phrases which the legislature did not include. In construing a statute, we must presume the legislature said all that it intended to say." Larsen, 2002 ND 51 ¶ 11, quoting Selzler v. Selzler, 2001 ND 138, ¶ 18, 631 N.W.2d 564; Johnson v. North Dakota Workers' Comp. Bureau, 539 N.W.2d 295, 298 (N.D. 1995).

[27] Furthermore, this Court has recognized that submitting a request for reconsideration from an informal notice of decision contemplates a "statement of alleged errors in the prior decision, which necessarily requires the application of legal skill and knowledge to the facts of the case." Carlson v. Workforce Safety and Insurance, 2009 ND 27 ¶ 18, 765 N.W.2d 691. It is reasonable, therefore, to

believe that generally a request for reconsideration would have been submitted by an attorney, and service of an Administrative Order could be served on the attorney responding to the notice of decision. It makes sense, therefore, that the legislature did not incorporate in N.D.C.C. § 65-04-32 service of process requirements under Rule 4 of the North Dakota Rules of Civil Procedure and instead simply required service of the Administrative Order by certified mail. In this case, even though a notice of decision was not issued and WSI went directly to issuing an Administrative Order under N.D.C.C. § 65-04-32(3), Robinson had the benefit of even more information regarding WSI's position on his personal liability and premium calculations having been served with a Summons and Complaint outlining the same in the civil action that preceded issuance of WSI's Administrative Order. In that proceeding Robinson was represented by counsel. It made sense, therefore, that WSI simply proceed with issuance of the Administrative Order on March 30, 2017, rather than issue a notice of decision. It is clear that WSI may proceed directly to Administrative Order under N.D.C.C. § 65-04-32(3).

[28] Robinson then contends that the ALJ erred in concluding that WSI could maintain the administrative proceeding against Robinson without having served or mailed WSI's Administrative Order to Robinson, instead of his attorney. In support of this contention, Robinson refers to the arguments made by his counsel at the outset of the hearing.

[29] As outlined above, what was argued by counsel at the hearing related to whether WSI had served a Notice of Decision under N.D.C.C. § 65-04-32(1). Those arguments related to issuance of a Notice of Decision, an informal

document issued after an internal review. See Carlson, 2009 ND 87 ¶ 14, 765 N.W.2d 691 (discussing statutory procedures for issuance of notice of decisions and administrative orders). Based on the arguments presented at that time, WSI responded that there was no requirement to issue a notice of decision prior to issuance of an Administrative Order. N.D.C.C. § 65-04-32(3) so provides. That was the issue also raised in the Request for Hearing from WSI's Order. (Appx. 35-36) The ALJ responded to the argument that was proffered at the time of the hearing. Since that time, Robinson has refined the arguments and made them more specific, including the argument that service under Rule 4 of the North Dakota Rules of Civil Procedure is required (addressed above). As this Court has recognized, judges (including administrative law judges) are not ferrets and not required to consider arguments that are not adequately articulated, supported and briefed. State v. Noack, 2007 ND 82 ¶ 8, 732 N.W.2d 389, citing State v. Haibeck, 2006 ND 100 ¶ 9, 714 N.W.2d 52. At the administrative hearing, counsel for WSI and the ALJ responded to the argument advanced by Robinson's counsel concerning the requirement of issuance of a notice of decision prior to issuing the administrative order. Based on the argument presented, the ALJ correctly concluded that WSI was not required to issue an informal Notice of Decision and serve that on Robinson prior to issuing its Administrative Order on March 30, 2017. Accordingly, Robinson's argument on that issue should be rejected.

[30] It is important to note when considering the arguments presented by Robinson in this appeal, that Robinson had argued that N.D.C.C. § 28-32-21(1)

governs how administrative proceeding must be initiated when claiming that Rule 4 of the Rules of Civil Procedure applies to initiating administrative actions. (Appx. 67) However, the plain language of N.D.C.C. § 28-32-21 reflects that proceedings can be initiated when there is not a hearing on a complaint, and in those instances **“the provisions of subdivision 1 do not apply.”** N.D.C.C. § 28-32-21(3)(a) (emphasis supplied). Proceedings initiated by WSI do not begin with the issuance of a complaint. Instead, such proceedings are initiated after issuance of an administrative order, in this instance under N.D.C.C. § 65-04-32. Robinson’s arguments therefore that N.D.C.C. § 28-32-21(1)(b) required service of process of WSI’s Order under Rule 4 of the North Dakota Rules of Civil Procedure was in error. That subsection **does not apply** to initiation of a WSI administrative proceedings. That is governed by N.D.C.C. § 65-04-32 when it involves an issue relating to an employer account. Under rules of statutory construction, a specific statute controls a general statute. Johnson v. Nodak Mut. Ins. Co., 2004 ND 293 ¶ 12, 699 N.W.2d 45. Thus, N.D.C.C. § 64-04-32 being a more specific statute applicable to WSI on initiation of adjudicative proceedings, would control over the general statute such of N.D.C.C. § 28-32-21.

[31] Under N.D.C.C. § 65-04-32(4) a party has 30 days from the date of service of an administrative order to file a request for hearing. Robinson, through counsel, submitted a request for hearing from the March 30, 2017, Administrative Order. (Appx. 35-37) Thereafter, “rehearings must be conducted as hearings under chapter 28-32 “to the extent that chapter does not conflict with this section.” N.D.C.C. § 65-04-32(5). In his Brief to this Court, Robinson then asserts error

because a copy of the notice of hearing and specification of issues or other document must be issued under N.D.C.C. § 28-32-21(3)(c). This argument is without merit, as there was a Notice of Hearing issued by the ALJ setting forth the issues to be considered.

[32] N.D.C.C. § 65-04-22.1 provides that WSI may contract with the Office of Administrative Hearings for designation of administrative law judges to conduct the evidentiary hearing and issue final findings of fact, conclusions of law and orders. N.D.C.C. § 28-32-21(3) provides that if an adjudicative proceeding does not involve a hearing on a complaint (such as is the case in this proceeding), the agency shall designate a time and place for hearing and serve a copy of the notice of hearing upon all the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure. A Notice of Hearing, Specification of Issue and Prehearing Order setting the matter on for rehearing/hearing before an Administrative Law Judge was issued on July 11, 2017, by the ALJ and served on counsel for Robinson and counsel for WSI. (Appx. 38-41) In addition, as evident from the transcript of the proceedings, Robinson was permitted to raise the issues of due process and jurisdiction at the hearing. (Appx. 44-46) Any argument, therefore, that Robinson was not accorded proper Notice under N.D.C.C. § 28-32-21(3)(c) is wholly without merit. Accordingly, the Court should hold that WSI's properly complied with the applicable statutory requirements to initiate the administrative action when it issued and served its March 30, 2017, Order on Robinson's counsel.

C. ROBINSON WAS ACCORDED DUE PROCESS TO CHALLENGE WSI'S DECISION ON PERSONAL LIABILITY AND PREMIUM CALCULATION.

[33] WSI issued an Administrative Order on issues which the Legislature has conveyed to WSI as having the authority to decide, and served that Order pursuant to N.D.C.C. § 65-04-32(3) via certified mail as required by statute. That Order outlined WSI's claims and the basis of those claims. As such, the administrative adjudicative proceeding was properly initiated because WSI complied with the statutory requirements outlined under Title 65 when it issued its Order of March 30, 2017. "In order to comport with due process, a fair hearing requires reasonable notice or opportunity to know of the claims of opposing parties, along with the opportunity to rebut those claims. Due process also requires a fair hearing, which prevents defects in the hearing process that might lead to a denial of justice." Holbach v. Dixon, 2007 ND 60, ¶ 7, 730 N.W.2d 613 (citations and quotation marks omitted). Under this standard, Robinson was accorded proper notice of the proceedings, and opportunity to present witnesses and evidence on his own behalf and cross-examine WSI's witnesses. Robinson chose not to present any testimony or evidence of his own, but did have counsel present to cross-examine WSI's witnesses. Under the aforementioned standard, Robinson was accorded full due process required under the law. His arguments on this issue, therefore, must be rejected.

[34] Furthermore, the situation here is not anything like what occurred in Rojas v. Workforce Safety & Ins., 2005 ND 147 ¶ 11, 703 N.W.2d 299. Robinson was served with process – a Summons and Complaint – in a collection action in August of 2015. (Appx. 6-8; C.R. 8-9) As noted in WSI's Administrative Order, that

action was dismissed without prejudice to allow an opportunity for Robinson to litigate the premium calculation and the issue of his personal liability. (Appx. 31) Robinson's counsel cross-examined WSI's witnesses regarding that premium calculation and how and why the claims made by Robinson concerning that calculation, as set forth in the pleadings submitted in the District Court action were in error.

[35] On the personal liability issue, N.D.C.C. § 65-04-26.1 entitled "Corporate officer personal liability" provides:

1. An officer or director of a corporation, or manager or governor of a limited liability company, or partner of a limited liability partnership, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section 65-05-07.2, including interest, penalties, and costs if the corporation or limited liability company does not pay to the organization those amounts for which the corporation or limited liability company is liable.

(Emphasis supplied.) Robinson admitted he was Vice President of Dalton Logistics between August 2011 and May 2015. (C.R. 121-122) He did not appear at the hearing to testify otherwise. Thus, there is no question he meets the requirements of being an "officer" of the corporation (Dalton Logistics, Inc.) which incurred the premiums, penalties and interest owed to WSI. The ALJ properly so concluded. (Conclusion of Law #5, Appx. 60) The District Court agreed. (Appx. 96) There is, therefore, no basis to contend that there is any improper notice or understanding on the part of Robinson as to the nature of how and why he could be held personally

liable for those premiums. This Court, therefore, should reject any claims of violation of due process.

CONCLUSION

[36] For the foregoing reasons, WSI respectfully requests that the District Court's Order Affirming Hearing Officer's Decision dated August 21, 2018, be affirmed in all respects.

DATED this 31st day of December, 2018.

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CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for the Appellee, North Dakota Workforce Safety and Insurance, in this matter, and as the author of the above Brief, hereby certifies, in compliance with Rule 32(a)(7) of the North Dakota Rules of Beaulieu Procedure, that the Brief of Appellee was prepared with proportional typeface and the total number of words in the above Brief, excluding words in the table of contents, table of authorities, signature block, certificate of service and this certificate of compliance, totals 5,029.

DATED this 31st day of December, 2018.

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