

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

LUIS A. BARRETO,
Claimant,
v.
CORITAS DRYWALL, L.L.C.,
Employer,
and
STATE INSURANCE FUND,
Surety,
Defendants.

IC 2011-024581

**ORDER DENYING PETITION FOR
DECLARATORY RULING**

Filed March 19, 2014

On February 13, 2014, Claimant filed a request for declaratory ruling with supporting memorandum. Claimant requests a declaratory ruling on the following question: “whether the ‘alienage status’ disability coverage exclusion of *Diaz* and its administrative progeny is nullified by Idaho Supreme Court precedent, or otherwise superseded and/or preempted/foreclosed by Idaho law?” Claimant contends that he was involved in an industrial accident that resulted in PPI and PPD; however, his “alienage status” will preclude him from an award of PPD benefits. Claimant has a case currently pending before the Commission.

On February 26, 2014, Defendants filed an objection to Claimant’s request. Defendants argue that Claimant’s proposed issues are not proper for a declaratory ruling, because the Commission’s clear holdings in *Diaz v. Franklin Building Supply*, 2009 IIC 0652 and subsequent cases have addressed whether or not an undocumented immigrant not legally employable in the United States would be entitled to benefits for an alleged disability beyond impairment. Further,

Claimant has not presented any evidence that (1) he is an undocumented worker not legally entitled to work in the United States; and (2) Claimant is otherwise entitled to benefits for a permanent disability in excess of his impairment. In order to resolve Claimant's questions, the Commission would need to make factual findings.

On March 7, 2014, Claimant filed a reply brief. Claimant argues that Defendants' objection substantiates the need for a declaratory judgment, and that Claimant's "alienage status" falls within the administrative parameters of the *Diaz* disability coverage exclusion.

Pursuant to J.R.P. 15(F), the Commission has the authority to decline to make a declaratory ruling. The Commission finds that this matter is more properly handled as one of the issues to be decided by the Referee assigned to this case in the normal course of proceeding. There has been no adjudication on whether or not Claimant is entitled to disability in excess of impairment. Claimant's disagreement with the Commission's holding in *Diaz v. Franklin Building Supply*, 2009 IIC 0652, is an inappropriate basis for a declaratory ruling.

Based on the foregoing, Claimant's request for a declaratory ruling is **DENIED**.

IT IS SO ORDERED.

DATED this 19th day of March, 2014.

INDUSTRIAL COMMISSION

/s/

Thomas Baskin, Chairman

/s/

R.D. Maynard, Commissioner

/s/

Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March , 2014, a true and correct copy of the **ORDER DENYING PETITION FOR DECLARATORY RULING** was served by United States Mail upon each of the following:

JUSTIN AYLSWORTH
GOICOECHEA LAW OFFICES CHTD
PO BOX 6190
BOISE ID 83707-6190

JAMES FORD
ELAM & BURKE
PO BOX 1539
BOISE ID 83701

ka

/s/ _____