

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERBERT JONES, JR.,  
Appellant,  
vs.  
EMPLOYERS INSURANCE  
COMPANY OF NEVADA, A  
MUTUAL COMPANY,  
Respondent.

No. 43900

**FILED**

JAN 31 2007

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; David T. Wall, Judge.

Appellant Herbert Jones, Jr., suffered an industrial accident in April 1988. His right shoulder was injured at the time. Subsequently, other body parts were added to his claim until, in October 1994, an appeals officer found that appellant was permanently and totally disabled and was entitled to permanent total disability (PTD) benefits, effective January 6, 1994. In December 1997, appellant injured his left knee in a non-industrial motorcycle accident. Appellant sought to have his left knee added to his industrial insurance claim and to increase his PTD benefits.

The insurer denied both requests, and the issues were raised in a hearing before an appeals officer.

The appeals officer found that appellant had not met his burden to prove that his left knee problems should be included in the industrial claim.<sup>1</sup> This finding was based on substantial evidence submitted by Dr. Miao and Dr. Sutherland. Neither this court nor the district court will disturb the factual findings of the appeals officer if the findings are based on substantial evidence.<sup>2</sup>

Appellant argues that he has not been treated fairly in that his PTD benefits should have been increased previously. He has raised this issue a number of times over the years, and it has been repeatedly denied by the appeals officers or the courts. Those determinations are final determinations and cannot be reviewed at this time. The only issue in this case regarding an increase in PTD benefits is whether the benefits should be increased based on the new non-industrial knee injury. Since the finding, supported by substantial evidence, has been made that the new injury is not part of the industrial claim, there is no basis for even


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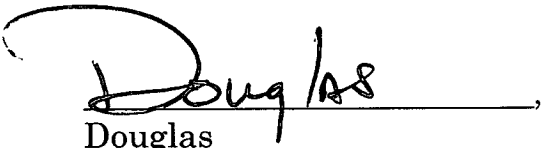
<sup>1</sup>Las Vegas Hous. Auth. v. Root, 116 Nev. 864, 868, 8 P.3d 143, 146 (2000) (recognizing that a non-industrial injury requires claim reopening only when that injury is shown to have aggravated or exacerbated a previous industrial injury, which remains the primary cause of the claimant's worsened condition).

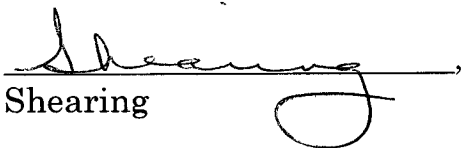
<sup>2</sup>Nevada Industrial Comm'n v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977).

considering an increase in benefits. Accordingly, we affirm the district court's order denying the petition for judicial review.

It is so ORDERED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, Sr. J.  
Shearing

cc: Hon. David Wall, District Judge  
Herbert Jones Jr.  
Beckett, Yott & McCarty/Reno  
Eighth District Court Clerk

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<sup>3</sup>The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under a general order of assignment entered on January 10, 2007.