

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY  
OF NEVADA, A MUTUAL COMPANY,  
Appellant,  
vs.  
KITTY COOPER,  
Respondent.

No. 43998

**FILED**

**NOV 17 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; David Wall, Judge.

Respondent Kitty Cooper sustained a work-related injury to her back and submitted a workers' compensation claim to appellant Employers Insurance Company of Nevada (EICON). Initially, EICON accepted her claim but limited coverage liability to a lumbar spine strain. Although Cooper continued to experience lower extremity numbness, EICON closed her claim after receiving numerous conflicting medical opinions as to the cause of her numbness. After undergoing spinal surgery, Cooper submitted a request that EICON reopen her claim, which EICON denied. Cooper administratively appealed the denial to reopen her claim and a hearing officer denied her appeal. However, in a subsequent appeal, the appeals officer reversed the hearing officer's decision and reopened Cooper's claim. Consequently, EICON petitioned the district court for judicial review, which was denied. EICON now appeals.

“[W]hen reviewing the decision of an administrative agency, a court is limited to the agency record, and may not substitute its judgment for that of the agency as to the weight of evidence on questions of fact.”<sup>1</sup> This court may reverse the decision of an administrative agency only if the substantial rights of the appellant have been prejudiced because the final decision of the agency is, among other things, arbitrary, capricious, or clearly characterized by an abuse of discretion.<sup>2</sup>

EICON contends that the appeals officer erred by reopening Cooper’s claim because Cooper failed to meet her burden of proof under NRS 616C.390(1).<sup>3</sup> Under this statute, Cooper’s medical condition must

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<sup>1</sup>Secretary of State v. Tretiak, 117 Nev. 299, 305, 22 P.3d 1134, 1138 (2001) (alteration in original) (quoting Beavers v. State, Dep’t of Mtr. Vehicles, 109 Nev. 435, 438, 851 P.2d 432, 434 (1993)).

<sup>2</sup>Schepcoff v. SIIS, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993); State, Dep’t of Mtr. Veh. v. Root, 113 Nev. 942, 947, 944 P.2d 784, 787 (1997); see also NRS 233B.135(3)(f).

<sup>3</sup>NRS 616C.390(1) states

If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

(a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

(c) The application is accompanied by the certificate of a physician or a chiropractor showing

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have undergone a change in circumstances sufficient to warrant an increase or rearrangement of compensation. Specifically, EICON argues that Cooper failed to prove that the primary cause of the change of circumstances was the original work-related injury because she failed to set forth substantial, objective evidence. In addition, EICON argues that no doctor has established a causal relationship between Cooper's acute disc problems that required surgery and the accepted work-related lumbar strain.

In the record before the appeals officer were two letters from Dr. Mark Kabins, who performed Cooper's spine surgery, that evince a causal relationship between Cooper's work-related injury and her lower extremity numbness. In the first letter, Dr. Kabins opined that Cooper's medical condition made her an appropriate candidate for anterior and posterior reconstruction. Dr. Kabins also noted that, based on the medical history provided by Cooper, it appeared that the work-related injury caused Cooper's worsened condition. In the second letter, Dr. Kabins more firmly opined that Cooper's work-related injury was the primary cause of her back condition, which necessitated surgical treatment.

The appeals officer determined that Dr. Kabin's opinions and post-claim diagnostic studies established a change of circumstance concerning Cooper's condition caused primarily by the original work-related injury. The appeals officer found the opinions of Cooper's medical

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*... continued*

a change of circumstances which would warrant an increase or rearrangement of compensation.

experts to be more persuasive than the conflicting opinions of EICON's medical experts.

"If the record includes substantial evidence supporting the appeals officer's decision, that decision will not be disturbed upon judicial review."<sup>4</sup> This court has defined substantial evidence as that which "a reasonable mind might accept as adequate to support a conclusion."<sup>5</sup> A reasonable mind could conclude from the evidence presented that Cooper's work-related injury caused her lower extremity numbness and necessitated further surgical intervention.

The appeals officer's decision that the numbness and necessary surgery constituted a change in circumstances warranting claim reopening under NRS 616C.390 was supported by substantial evidence and, thus, was not arbitrary, capricious or an abuse of discretion. Therefore, this court will not disturb it on appeal.<sup>6</sup> Accordingly, we affirm the district court's order denying judicial review.

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<sup>4</sup>Diaz v. Golden Nugget, 103 Nev. 152, 156, 734 P.2d 720, 723 (1987).

<sup>5</sup>State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

<sup>6</sup> This court has also considered EICON's jurisdictional challenge and determined that it is without merit. EICON contends that the district court lacked jurisdiction to hear the petition for judicial review because Cooper failed to file her notice of intent to participate within the statutory twenty-day filing requirement as set forth in NRS 233B.130(3). The twenty-day filing requirement in NRS 233B.130(3) serves a notice function only and does not deprive the district court of jurisdiction. See Civil Service Comm'n v. Dist. Ct., 118 Nev. 186, 190, 42 P.3d 268, 271 (2002) (recognizing that the only jurisdictional and mandatory requirement for preserving the right to judicial review is timely and properly filing a petition in substantially correct form).

It is so ORDERED.

Maupin J.  
Maupin

Gibbons J.  
Gibbons

Hardesty J.  
Hardesty

cc: Hon. David Wall, District Judge  
Janet Trost, Settlement Judge  
Beckett, Yott & McCarty/Reno  
Greenman Goldberg Raby & Martinez  
Clark County Clerk