

IN THE SUPREME COURT OF THE STATE OF NEVADA

LIBERTY MUTUAL,
Appellant,
vs.
REINA CISNEROS,
Respondent.

No. 44187

FILED

MAY 17 2006

BY Janette M. Bloom
DEPUTY CLERK

ORDER OF REVERSAL

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

Respondent Reina Cisneros filed a workers' compensation claim with her employer, Bloomingdale's, alleging that she suffered from an occupational disease. Bloomingdale's workers' compensation insurance company, appellant Liberty Mutual, denied Cisneros' claim, and Cisneros appealed. A hearing officer affirmed Liberty's denial. Cisneros then appealed to the appeals officer, who found that Cisneros was a credible witness and that her testimony constituted substantial evidence that her condition was work related. Liberty sought judicial review from the district court, which denied Liberty's petition and affirmed the appeals officer's decision.

Liberty appealed, arguing that the appeals officer's decision was arbitrary and capricious because Cisneros did not provide medical evidence proving that the injury was caused by her working conditions. We agree and reverse the district court's decision. The parties are familiar with the facts, and we do not further recount them except as necessary for our decision.

Like the district court, we review administrative decisions to determine if the decision was arbitrary and capricious or an abuse of discretion.¹ While this court independently reviews purely legal determinations,² “the appeals officer’s fact-based conclusions of law are entitled to deference and will not be disturbed if they are supported by substantial evidence.”³ “Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.”⁴

In a workers’ compensation case, the claimant bears the burden of establishing “by a preponderance of the evidence that [her] occupational disease arose out of and in the course of [her] employment.”⁵ Mere speculation regarding whether an occupational disease is work related is insufficient for a workers’ compensation claimant to meet her burden.⁶ The claimant must prove that it is probable, and not merely possible, that her occupational disease arose out of and in the course of her employment.⁷

¹Seino v. Employers Ins. Co. of Nevada, 121 Nev. ___, ___, 111 P.3d 1107, 1110 (2005).

²City Plan Dev. v. State, Labor Comm’r, 121 Nev. ___, ___, 117 P.3d 182, 187 (2005).

³Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. ___, ___, 112 P.3d 1093, 1097 (2005).

⁴City Plan Dev., 121 Nev. at ___, 117 P.3d at 187.


⁵NRS 617.358(1).


⁶United Exposition Service Co. v. SIIS, 109 Nev. 421, 424, 851 P.2d 423, 425 (1993).

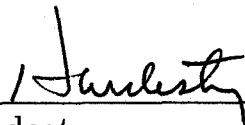
⁷Id. at 424-25, 851 P.2d at 425.

Here, Cisneros presented no evidence, other than her own testimony, to demonstrate that her condition arose out of and in the course of her employment. She sought medical treatment, but her treating physician was unable to determine whether her occupational disease arose out of her employment. Therefore, we conclude that the record does not contain substantial evidence to support the appeals officer's finding that Cisneros' occupational disease was work related.⁸ Accordingly, we

ORDER the judgment of the district court REVERSED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Nevada Attorney for Injured Workers/Las Vegas
Clark County Clerk

⁸We are not deciding whether medical evidence of causation must be provided in every instance for a claimant to receive workers' compensation for industrial-related occupational diseases. We merely conclude that, in this case, Cisneros' own non-medical testimony of causation cannot constitute substantial evidence since she had worked at Bloomingdale's for only two weeks and no treating physician was able to determine that Cisneros' disease arose out of her employment.