

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARILYN JIMENEZ,
Appellant,
vs.
CLARK COUNTY SCHOOL DISTRICT,
Respondent.

No. 45423

FILED

JUL 13 2006

ORDER OF REVERSAL

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

This is an appeal from a district court order granting respondent's petition for judicial review in an occupational disease case. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

FACTS

Appellant Marilyn Jimenez began to experience limited pain in her hands in 2002, but her general practitioner did not provide a diagnosis at that time. In February 2003, Jimenez returned to her general practitioner because the pain intensified. To aid in alleviating the pain, her doctor gave her wrist braces to wear at night. Although the braces helped, Jimenez stated that the pain in her right hand continued to increase. Jimenez "wondered if maybe because of my age if I didn't have arthritis."

X-rays were taken in March 2003. The medical records state that the "working diagnosis" was carpal tunnel syndrome but that the doctor could not "completely exclude cervical spine disease" as the cause of Jimenez's pain. Jimenez's general practitioner recommended that Jimenez see a hand specialist, Dr. Arthur J. Taylor.

On April 7, 2003, Dr. Taylor examined Jimenez. Dr. Taylor noted that Jimenez had not had any significant nerve studies conducted.

Dr. Taylor referred Jimenez to Dr. F. Boulware, a neurologist, for an EMG. The EMG was performed approximately one month later.

On May 21, 2003, Dr. Taylor examined the EMG results. Based on those results, Dr. Taylor diagnosed Jimenez with carpal tunnel syndrome. Jimenez argues that this is the first time she was given a "definitive diagnosis" that she had carpal tunnel syndrome.

Jimenez notified her employer, respondent Clark County School District, of her occupational disease six days after being diagnosed with carpal tunnel syndrome. Jimenez later filed a claim for occupational disease benefits. After review, the school district denied Jimenez's claim. Jimenez administratively appealed, and ultimately, an appeals officer reversed the school district's denial of Jimenez's claim.

In granting Jimenez's claim, the appeals officer made three findings: (1) Jimenez did not have the requisite knowledge of her carpal tunnel syndrome that triggered her duty to notify her employer and make a claim for occupation disease benefits until May 21, 2003, "when she obtained the results of her EMG and nerve conduction studies"; (2) Jimenez timely filed her notice and claim forms; and (3) even if Jimenez had not timely filed her forms, her untimeliness was excused under NRS 617.346(2).

The school district then petitioned the district court for judicial review of the appeals officer's determination. The district court granted the petition, determining that the appeals officer had misinterpreted the applicable law. The district court's order provided that "[a] 'definitive diagnosis' is not required to trigger the filing requirements." Instead, the district court determined that Jimenez reported her work-related condition on April 7, 2003, but did not file a claim at that time.

Starting from the premise that Jimenez had knowledge of her condition on April 7, 2003, the district court reached four conclusions: first, that “substantial evidence supported the fact that on April 7, 2003, Jimenez knew that her condition was work related”; second, that because Jimenez had knowledge of her work related injury on April 7, 2003, her notice and claim forms were untimely filed under NRS 617.342(1)¹ and NRS 617.344(4);² third, that the appeals officer’s decision that Jimenez had knowledge of her injury on May 21, 2003, was arbitrary and capricious; and fourth, that the record did not contain “evidence that would support an excuse for the untimely filing under NRS 617.346(2).” Thus, the district court granted the petition and reversed the appeals officer’s decision. Jimenez now appeals the district court’s order.

DISCUSSION

NRS 233B.135 is the statute that governs the review of administrative decisions. In undertaking such a review, “this court’s role is identical to that of the district court.”³ “When reviewing the decision of an administrative agency, a court is limited to the agency record, and may

¹NRS 617.342(1) states that “[a]n employee . . . shall provide written notice of an occupational disease . . . to the employer of the employee as soon as practicable, but within 7 days after the employee . . . has knowledge of the disability and its relationship to the employee’s employment.”

²NRS 617.344(1) states that “an employee who has incurred an occupational disease . . . shall file a claim for compensation with the insurer within 90 days after the employee has knowledge of the disability and its relationship to his employment.”

³Secretary of State v. Tretiak, 117 Nev. 299, 305, 22 P.3d 1134, 1137-38 (2001).

not substitute its judgment for that of the agency as to the weight of evidence on questions of fact.”⁴

This court “review[s] the evidence presented to the agency in order to determine whether the agency’s decision was arbitrary or capricious and was thus an abuse of the agency’s discretion.”⁵ Additionally, “[i]f the record includes substantial evidence supporting the appeals officer’s decision, that decision will not be disturbed upon judicial review.”⁶ This court has defined substantial evidence as that which ““a reasonable mind might accept as adequate to support a conclusion.””⁷ If the appeals officer’s decision was arbitrary or capricious, or the decision is not supported by substantial evidence, this court may set aside that decision if it prejudiced the petitioner’s substantial rights.⁸

We reverse the district court for two reasons. We conclude that (1) the district court improperly substituted its judgment for the appeals officer’s finding on a question of fact; and (2) that the appeals officer’s finding that Jimenez first had knowledge of her carpal tunnel syndrome on May 21, 2003, is supported by substantial evidence.

⁴Id. at 305, 22 P.3d at 1138 (quoting Beavers v. State, Dep’t of Mtr. Vehicles, 109 Nev. 435, 438, 851 P.2d 432, 434 (1993)).

⁵Clements v. Airport Authority, 111 Nev. 717, 721, 896 P.2d 458, 460 (1995).

⁶Diaz v. Golden Nugget, 103 Nev. 152, 156, 734 P.2d 720, 723 (1987).

⁷Tretiak, 117 Nev. at 305, 22 P.3d at 1138 (quoting 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))).

⁸NRS 233B.135(3).


Accordingly, we reverse the district court's order granting the school district's petition for judicial review.

The district court improperly substituted its judgment for the appeals officer's finding on a question of fact. The appeals officer found that Jimenez did not have "knowledge" that she was suffering from carpal tunnel syndrome until May 21, 2003, when Dr. Taylor reviewed the EMG tests and diagnosed Jimenez with the condition. Under NRS 233B.135(3), the district court's scope of review is limited to determining whether substantial evidence supports the appeals officer's finding. By unilaterally making a finding as to when Jimenez knew of her condition, the district court substituted its judgment for that of the appeals officer on a question of fact in contravention of NRS 233B.135. Thus, the district court erred when it made this finding.

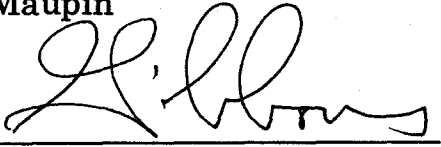
Additionally, the appeals officer's finding that Jimenez first had "knowledge" of her carpal tunnel syndrome on May 21, 2003, is supported by substantial evidence. Jimenez testified that the March 25 and the April 7 doctor visits did not result in a definitive diagnosis of carpal tunnel syndrome or that the syndrome was work related. Prior to the EMG tests, the diagnosis was a "working diagnosis" of carpal tunnel syndrome, but with the possibility that Jimenez could be suffering from cervical spine disease. The medical record confirms that Jimenez was diagnosed with carpal tunnel syndrome on May 21, 2003, when Dr. Taylor interpreted the EMG test results. Thus, substantial evidence exists in the record to support the appeals officer's findings.

We therefore conclude that the district court erroneously granted the school district's petition for judicial review.⁹ Accordingly, we reverse the district court's order.

It is so ORDERED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Lester H. Berkson, Settlement Judge
Scott R. Schreiber
Clark County School District Legal Department
Clark County Clerk

⁹We have considered the remaining issues on appeal and conclude that they are moot or without merit.