

IN THE SUPREME COURT OF THE STATE OF NEVADA

STAR/MEADOWBROOK INSURANCE
SERVICES,
Appellant,
vs.
FRANCISCO ARJONA,
Respondent.

No. 45795

FILED

SEP 28 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying judicial review of an administrative appeals officer's determination in a workers' compensation matter. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Star/Meadowbrook Insurance Services (Star) is a third-party insurer of workers' compensation. Respondent Francisco Arjona (Arjona) was injured on July 3, 2003, while employed as a maintenance worker for one of Star's clients, Artisan Hotel and Spa (Artisan). Arjona filed a claim for workers' compensation benefits, which was accepted on August 19, 2003. Artisan did not appeal this acceptance but subsequently complained to Star. Star denied the claim, based upon an amended determination challenging its legitimacy. Arjona administratively appealed. The appeals officer reversed the hearing officer and found in favor of Arjona. The district court denied Star's petition for judicial review. Star appeals, arguing that the district court abused its discretion in denying Star's petition. We disagree.

Standard of review

This court, like the district court, reviews administrative agency decisions for abuse of discretion.¹ The court defers to an agency's factual findings when they are supported by substantial evidence in the administrative record.² Substantial evidence can be "inferentially shown by [a] lack of [certain] evidence" in the record.³ Substantial evidence is evidence which one might reasonably accept as adequate to support the conclusion.⁴ The court reviews questions of law, such as statute construction, de novo.⁵ However, because an agency's conclusions of law are closely related to its view of the facts, they are entitled to deference.⁶ The court cannot substitute its judgment for that of the agency as to credibility determinations.⁷ A district court does not abuse its discretion

¹Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 603, 939 P.2d 1043, 1045 (1997); see also NRS 233B.135(3).

²Gorsky, 113 Nev. at 603, 939 P.2d at 1045; NRS 233B.135(3).

³Wright v. State, Dep't of Motor Vehicles, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005) (quoting City of Reno v. Estate of Wells, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994)).

⁴Gorsky, 113 Nev. at 603-04, 939 P.2d at 1045.

⁵Tighe v. Las Vegas Metro. Police Dep't, 110 Nev. 632, 634-35, 877 P.2d 1032, 1034 (1994); Maxwell v. SIIS, 109 Nev. 327, 329, 849 P.2d 267, 269 (1993).

⁶Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003) (citing SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993)).

⁷State, Emp. Sec. Dep't v. Weber, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984); NRS 233B.135(3).

by affirming administrative decisions that are not clearly erroneous and that are based on substantial evidence.⁸

Substantial evidence supports the appeals officer's finding that Star failed to prove fraud or misrepresentation

An insurer can permanently withdraw and deny an accepted claim only if it can prove fraud or misrepresentation.⁹ Star argues that substantial evidence does not support the appeals officer's finding that it failed to prove that Arjona engaged in fraud or misrepresentation. We disagree.

In the administrative proceedings, Star bore the burden of proving Arjona's wrongdoing.¹⁰ The appeals officer considered Star's challenge to the legitimacy of Arjona's claim and found that Star did not prove Arjona was involved in any wrongdoing. Because Star did not prove any wrongdoing, we conclude that substantial evidence supports the appeals officer's finding.¹¹ Because Star did not sustain its burden to prove fraud or misrepresentation, we further conclude that the appeals officer properly found that Star had no authority to permanently withdraw and deny Arjona's claim.¹² As such, the district court did not abuse its discretion by affirming the appeals officer's decision as to this issue.

⁸Ayala, 119 Nev. at 235, 71 P.3d at 491; Currier v. SIIS, 114 Nev. 328, 333, 956 P.2d 810, 813 (1998).

⁹NRS 616C.225.

¹⁰NRS 233B.135(2).

¹¹Weber, 100 Nev. at 124, 676 P.2d at 1320; NRS 233B.135(3).


¹²NRS 616C.225.


Substantial evidence supports the appeals officer's conclusion that an industrial accident caused Arjona's injury

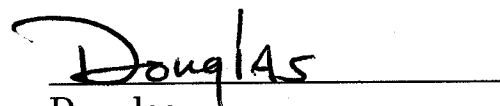
Star argues that the record does not support the appeals officer's finding that an industrial accident caused Arjona's injury. We disagree. The appeals officer found that evidence from Arjona's doctors supported Arjona's claim that there was an industrial accident. Therefore, the district court did not abuse its discretion by denying Star's petition as to this issue.

Having considered Star's other contentions of error and concluding that they lack merit, we conclude that the district court properly denied Star's petition for judicial review. Accordingly, we affirm the district court's order.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Persi J. Mishel, Settlement Judge
Wolfenzon Schulman
Edward M. Bernstein & Associates/Henderson
Clark County Clerk