IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERRI MUCKLER,
Appellant,
vs.
FREEMAN DECORATING; AND CRAWFORD AND COMPANY,
Respondents.

No. 47154

FILED

APR 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Sherri Muckler sustained an industrial injury to her left foot, when working for her former employer, respondent Freeman Decorating. The initial diagnosis was a contusion to her left heel. The employer's third party administrator, respondent Crawford and Company, accepted Muckler's workers' compensation claim for the heel contusion.

Throughout the next several months, Muckler continued to receive various treatments in an attempt to resolve persistent pains in, and the inversion of, her left foot. Muckler was examined by a podiatrist, who determined that Muckler could be suffering from post-traumatic dystonia. After recommending an examination by a neurologist and receiving his medical opinions that Muckler did not have dystonia and that, in any case, Muckler's current condition was unlikely to have resulted from her industrial injury, however, the podiatrist determined that Muckler was at maximum medical improvement and released her as stable and ratable for permanent partial disability (PPD) benefits.

Thereafter, Muckler was scheduled for a PPD evaluation. The PPD rating physician reviewed Muckler's medical records and conducted

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several tests. Ultimately, based on range of motion testing, he rated Muckler as having fourteen percent whole person impairment as a result of her industrial injury. The rating physician noted, however, that it was beyond the scope of the examination to determine whether Muckler actually had dystonia.

Following receipt of the PPD evaluation, respondents requested clarification from the podiatrist as to whether Muckler had dystonia and whether Muckler's condition bore a causal relationship to the industrial injury. The podiatrist responded, stating that, while Muckler appeared to have dystonia, any definitive diagnosis would have to be rendered by a specialist, that her condition's etiology was not consistent with the contusion, and that there was a small possibility that her condition was industrial. Nevertheless, the podiatrist agreed with Muckler's PPD evaluation. Respondents then closed Muckler's claim without awarding PPD benefits, asserting that Muckler's claim had been accepted only for the heel contusion.

Muckler administratively challenged the claim closure. An appeals officer determined that, while Muckler did have dystonia, respondents nevertheless correctly closed her claim without PPD benefits because none of the medical records sufficiently connected that condition with the industrial contusion injury or indicated any other residual impairment. The district court denied Muckler's subsequent petition for judicial review, and Muckler appeals.

This court, like the district court, reviews an appeals officer's decision for clear error or arbitrary abuse of discretion.[1] Although an

[1]Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003).

appeals officer's purely legal determinations are independently reviewed, 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.' Substantial evidence is that 'which a reasonable person might accept as adequate to support a conclusion.'"[2] Nor may we substitute our judgment for that of the appeals officer as to the weight of the evidence on a question of fact.[3] Our review is limited to the record before the appeals officer.[4]

Having reviewed the record, we conclude that substantial evidence supports the appeals officer's determinations that Muckler had dystonia and that the dystonia was not shown to be medically related to her industrial injury. Muckler argues, however, that the appeals officer improperly considered whether she had dystonia and whether dystonia was an accepted part of her workers' compensation claim, because the administrative appeal did not concern those issues. Instead, Muckler contends, the appeals officer merely was required to determine what level or percentage of impairment Muckler sustained from her industrial injury. Apparently, Muckler argues that the appeals officer (and Crawford and Company) was required to accept the PPD evaluation, regardless of the

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[2]Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993)).

[3]Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839, 842 (1997).

[4]Id. at 536, 936 P.2d at 842.

existence of other medical evidence indicating a dispute as to the disability's presence and industrial cause.[5]

Under NRS 616C.490(1), an employee who suffers an industrial injury—one that arises out of and in the course of employment—is entitled to benefits for any resulting permanent partial disability.[6] Thus, in resolving whether Muckler was entitled to PPD benefits as a result of her industrial injury under this statute, the appeals officer necessarily had to examine whether Muckler actually suffered a permanent disability—i.e., dystonia—especially as the podiatrist did not specify what she believed was Muckler's ratable condition, and then whether any such permanent disability resulted from the industrial accident or injury.[7] Ultimately, while it is within the scope of the physicians' expertise to inform on causation, it is the appeals officer's duty

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[5]Although Muckler asserts that the origin of her current condition lies with the industrial accident because she had no prior problems or injuries to her left foot, which is a relevant consideration, the appeals officer was free to give more weight to the several medical opinions that were either unable to sufficiently connect her condition to her work accident or injury, or indicated that such a connection was unlikely. See United Exposition Service Co. v. SIIS, 109 Nev. 421, 424-25, 851 P.2d 423, 425 (1993) (recognizing that, while the fact-finder may reasonably base her conclusion regarding whether a condition was caused by an industrial injury on other facts, she may also properly rely on a physician's statement opining, to a degree of reasonable medical probability, that the condition in question was caused (or not caused) by the industrial injury).

[6]See also NAC 616C.490(1) (recognizing that an employee is entitled to PPD compensation only for work-related injuries).

[7]See NRS 616C.150 (noting that workers' compensation is prohibited unless the claimant establishes the requisite work–injury connection); NRS 616C.160 (regarding late-manifesting injuries).

to determine, in light of the medical evidence, what conditions, legally, are considered industrial.[8]

Accordingly, as the appeals officer properly considered whether the PPD rating was based on a condition connected to the industrial injury, and because her determination that Muckler failed to show the required causal connection is based on substantial evidence, the district court's order denying judicial review is affirmed.[9]

It is so ORDERED.

Parraguirre, J.

Hardesty, J.

Douglas, J.

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[8]See, e.g., Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278, 287-88, 112 P.3d 1093, 1100 (2005) (recognizing that, while an expert medical opinion generally is necessary to establish a causal connection between the incident or injury and the disability, it is the appeals officer who makes the legal determination as to compensability based on the evidence). Day v. Washoe County Sch. Dist., 121 Nev. 387, 116 P.3d 68 (2005), cited by Muckler, is inapposite. Unlike in that case, here, the appeals officer did not revisit the initial claim acceptance. And even though respondents submitted the medical file regarding Muckler's left foot injury to the PPD evaluator, nothing in their January 15, 2002 letter notifying Muckler that her PPD evaluation had been scheduled purports to accept dystonia or any other additional condition as part of her claim.

[9]Both the third party administrator, before the administrative proceedings, and the appeals officer, throughout the administrative proceedings, questioned the medical connection between Muckler's current condition and her industrial accident/injury. Accordingly, as Muckler was on notice of this issue and had opportunities to present evidence with respect to it, remand of this matter is not warranted.

cc: Hon. Michelle Leavitt, District Judge
Kathleen M. Paustian, Settlement Judge
Greenman Goldberg Raby & Martinez
J. Michael McGroarty, Chtd.
Eighth District Court Clerk