IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND MELENDREZ,
Appellant,
vs.
FRESHPOINT OF LAS VEGAS,
Respondent.

No. 47651

FILED

DEC 0 4 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

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

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

In an appeal from a district court order granting a petition for judicial review, this court, like the district court, examines the administrative body's decision for clear error or for an arbitrary abuse of discretion.[1] While purely legal determinations are reviewed independently, an appeals officer's fact-based conclusions of law are entitled to deference, and those conclusions will not be disturbed if they are supported by substantial evidence.[2] Substantial evidence is "that which a 'reasonable mind might accept as adequate to support a

[1]Construction Indus. v. Chalue, 119 Nev. 348, 352-53, 74 P.3d 595, 597 (2003); SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).

[2]See Barrick Goldstrike Mine v. Peterson, 116 Nev. 541, 547, 2 P.3d 850, 853 (2000).

conclusion.'"[3] Further, while "this court will not substitute its judgment for that of the [appeals officer] as to the weight of the evidence, this court will reverse an [appeals officer's] decision that is clearly erroneous in light of reliable, probative, and substantial evidence on the whole record."[4] This court's review is limited to the record before the appeals officer.[5]

Appellant Raymond Melendrez argues on appeal that the district court erred in reversing the appeals officer's decisions to include additional body parts as a part of Melendrez's industrial injury claim and to keep Melendrez's industrial injury claim open.[6] We agree. However, we limit our conclusion to the extent that Melendrez had discovered injuries to additional body parts after the issuance of the claim acceptance letter and to the extent that the appeals officer determined that there was medical evidence establishing a causal relationship between the additional injuries and the original accident.

Under NRS 616C.160, an injured employee may seek treatment from a physician or chiropractor for unreported and undocumented newly developed injuries and diseases under an existing

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[3]Chalue, 119 Nev. at 352, 74 P.3d at 597 (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

[4]Id.; see Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

[5]Ayala, 119 Nev. at 235, 71 P.3d at 491.

[6]As stipulated by the parties, we do not address the issues relating to Melendrez's entitlement to temporary partial disability or temporary total disability benefits.

industrial claim under NRS 616C.020;[7] for such treatment, however, the physician or chiropractor must establish by medical evidence a causal relationship between the injuries or diseases for which treatment is being sought and the original accident.

For the additional body parts that Melendrez had complained of after the issuance of the claim acceptance letter, we conclude that the appeals officer could award industrial injury coverage under NRS 616C.160. We also conclude that substantial evidence in the record supports the appeals officer's determination that the medical evidence contained in the record established a causal relationship between the injuries for these additional body parts and the original accident.[8] Additionally, we note that Melendrez did not appeal the claim administrator's decision to limit coverage to injuries relating to chest wall contusion, right rotator cuff tendonitis, and right knee abrasion; however, we conclude that the appeals officer could award industrial injury coverage for Melendrez's injuries for additional body parts that were discovered and complained of after the issuance of the claim acceptance letter under NRS 616C.160. Therefore, we conclude that the district court should have given deference to the appeals officer's fact-based conclusion that there was a causal relationship between the additional injuries and

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[7]NRS 616C.020 provides in pertinent part that employees or persons acting on their behalf must file claims for industrial injuries with the insurer within ninety days after an industrial accident (unless the injured employee dies as a result of the injury); it further provides that the claim for compensation must be filed on a form proscribed by the claim administrator.

[8]See Peterson, 116 Nev. at 547, 2 P.3d at 853.

the original accident to the extent that Melendrez had discovered and complained of the injuries to his additional body parts after the issuance of the claim acceptance letter.[9]

As to Melendrez's injuries that he had complained of prior to the issuance of the claim acceptance letter, we conclude that the district court did not err in reversing the appeals officer's decision to award industrial injury coverage. Under our decision in Reno Sparks Visitors Auth. v. Jackson,[10] Melendrez's failure to appeal from the claim acceptance letter precluded him from seeking industrial injury coverage for additional body parts that he had complained of prior to the issuance of the claim acceptance letter. Accordingly, we conclude that the appeals officer lacked authority and subject matter jurisdiction to award industrial injury coverage for these additional injuries that Melendrez had complained of prior to the issuance of the claim acceptance letter.

In reaching this decision, we determine that Melendrez's argument that he lacked notice of his claim acceptance letter is without merit. Under SCR 182[11] and NRCP 5(b)(1),[12] the claim administrator was

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[9]As to respondent Freshpoint of Las Vegas's contention that the appeals officer's reliance on non-treating physicians was in err, we note that this court has held that the treating physician rule does not apply in this state. See McClanahan v. Raley's, Inc., 117 Nev. 921, 926-27, 34 P.3d 573, 576-77 (2001).

[10]112 Nev. 62, 65-66, 910 P.2d 267, 269 (1996) (holding that the hearing officer and appeals officer lacked authority and subject matter jurisdiction to excuse a claimant's untimely appeal of the insurer's denial of workers' compensation benefits).

[11]Before the enactment of NRPC 4.2, SCR 182 had provided: "In representing a client, a lawyer shall not communicate about the subject of

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required to send its claim acceptance letter to Melendrez's attorney; therefore, by providing notice to Melendrez's attorney, we conclude that Melendrez was afforded sufficient notice of the claim acceptance letter.[13]

Consequently, we conclude that the district court erred in reversing the appeals officer's decision to the extent that Melendrez had complained of his injuries to additional body parts after the issuance of the claim acceptance letter, as there is substantial evidence in the record to support the appeals officer's decision to award industrial injury coverage for these additional body parts.[14] To the extent that Melendrez had complained of the additional body parts prior to the issuance of the claim acceptance letter, we conclude that the district court did not err in reversing the appeals officer's decision to award industrial injury coverage; Melendrez's failure to appeal from the claim acceptance letter precluded the appeals officer from having authority or jurisdiction to

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. . . continued

the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

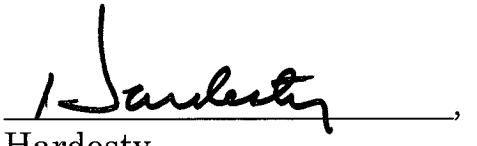
[12]NRCP 5(b)(1) provides in pertinent part: "Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless the court orders that service be made upon the party."

[13]The record reveals that Melendrez became aware of the claim acceptance letter by his attorney who was representing him for his industrial injury claim.

[14]See Peterson, 116 Nev. at 547, 2 P.3d at 853.

award coverage for these body parts.[15] Thus, we remand this matter to the district court to determine which additional body parts Melendrez had complained of after the issuance of the claim acceptance letter, as additional industrial injury coverage is appropriate for only these additional body parts in this case. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
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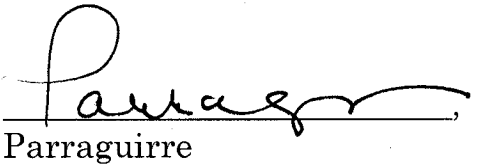
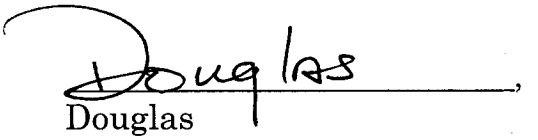


_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Thomas J. Tanksley, Settlement Judge
Nevada Attorney for Injured Workers/Las Vegas
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk

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[15]See Jackson, 112 Nev. at 65-66, 910 P.2d at 269.