

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHYLLIS MARTINEZ,
Appellant/Cross-Respondent,
vs.
U.S. GYPSUM AND GALLAGHER
BASSET SERVICES, INC.,
Respondents/Cross-Appellants.

No. 47942

FILED

SEP 24 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from a district court order denying a petition for judicial review and declining to award attorney fees and costs in a workers' compensation case.¹ Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Phyllis Martinez has non-industrial degenerative disc disease. In March 2004, Martinez filed a workers' compensation claim, asserting that her constant heavy lifting and physical work duties cumulated, on January 6, 2004, in an injury to her back or an aggravation of her non-industrial back condition.² Respondents U.S. Gypsum and Gallagher Bassett Services, Inc., Martinez's employer and its third-party administrator, respectively, denied Martinez's claim, concluding that Martinez had not timely notified her employer of any

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²Martinez also asserted that a December 18, 2003 slip-and-fall at work contributed to her back condition.

work-related injury and instead had told her employer on January 7, 2004, that her back condition was not work-related.

Martinez administratively appealed the claim determination to a hearing officer, who found that Martinez had failed to establish that her injury was work-related. An appeals officer subsequently upheld the claim denial, determining that Martinez had not shown that she suffered a specific industrial accident that resulted in the exacerbation of her degenerative back condition. Martinez petitioned for judicial review of the appeals officer's decision in the district court, and when the district court denied judicial review, Martinez appealed. Respondents have cross-appealed from the district court's order, asserting that the court should have awarded them attorney fees and costs, based on the frivolity of Martinez's petition.

On appeal, we, like the district court, review an appeals officer's decision for clear error or arbitrary abuse of discretion.³ Although we independently review the appeals officer's purely legal determinations,⁴ the appeals officer's fact-based conclusions of law are entitled to deference and will not be disturbed if supported by substantial evidence.⁵ Evidence is substantial if a reasonable person could accept it as adequately supporting a conclusion.⁶ We may not substitute our

³Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003); Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

⁴Chalue, 119 Nev. at 351-52, 74 P.3d at 597.

⁵Ayala, 119 Nev. at 235, 71 P.3d at 491-92.

⁶Id.

judgment for that of the appeals officer as to the weight of the evidence on a question of fact,⁷ and our review is limited to the record before the appeals officer.⁸

Here, Martinez argues that the appeals officer erred as a matter of law and arbitrarily and capriciously abused her discretion in determining that no industrial injury or aggravation occurred.⁹ Under NRS 616C.150(1), an employee is entitled to workers' compensation only after proving, by a preponderance of the evidence, that her "injury arose out of and in the course of [her] employment." So long as the employee meets this burden, her resulting condition will be compensable even when the industrial injury merely aggravates, precipitates, or accelerates a pre-existing non-industrial condition, unless the insurer can prove that the industrial injury is not a "substantial contributing cause of the resulting condition."¹⁰

After considering the parties' briefs and reviewing the record, we conclude that the appeals officer's decision is based on substantial

⁷Chalue, 119 Nev. at 352, 74 P.3d at 597.

⁸Ayala, 119 Nev. at 235, 71 P.3d at 491.

⁹Martinez also disputes that no industrial injury was timely reported, that no claim was timely filed, and that no excuse exists for any untimely filing. The appeals officer's decision did not mention the timeliness of any notice or claim, however, and thus that decision appears solely based on the appeals officer's conclusion that Martinez failed to show a work-related injury or aggravation of her prior condition. Accordingly, Martinez's arguments with respect to the timeliness of her notice and claim do not warrant reversal.

¹⁰NRS 616C.175(1).

evidence and not affected by legal error. In particular, the appeals officer, after considering the parties' various arguments, noted that Martinez initially denied that she was injured at work and that the medical reports initially generated did not provide that her injury was work-related; indeed, one report connected Martinez's condition to her degenerative disc disease and neurological impairment, despite noting her work conditions. Although the appeals officer also noted Martinez's asserted reasons for not reporting the condition as work-related earlier and the later medical reports connecting her back condition to her work, she nevertheless determined that, in light of the expert and layperson reports before her and given the discrepancies in Martinez's account of the injury, Martinez had failed to show, by a preponderance of the evidence, that her injury was sufficiently work-related. As a reasonable person could accept this evidence as adequately supporting the appeals officer's conclusion, we conclude that the district court properly denied judicial review.¹¹

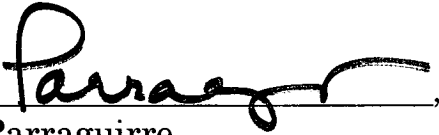
With respect to respondents' cross-appeal, respondents argue that the district court should have awarded them attorney fees and costs under NRS 616C.385, which permits such awards if the court determines that a petition for judicial review was frivolous or brought without

¹¹Although Martinez suggests that the appeals officer exceeded her jurisdiction in considering whether her injury was work-related, since the claim originally was denied based on timeliness, we note that the appeals officer has jurisdiction to consider "any matter raised before [her] on its merits," NRS 616C.360(2), and that both parties, in their statements of issues before the appeals officer, provided that one issue was whether Martinez had suffered an injury in the course and scope of her employment.

reasonable grounds. Here, after reviewing the record, we conclude, as a matter of law, that Martinez's petition for judicial review was not frivolous or brought without reasonable grounds. Martinez's situation was not one in which she had no evidence to support her claim or no basis whatsoever to challenge the appeals officer's decision. Accordingly, the district court did not abuse its discretion in denying fees and costs.¹² Further, respondents' request for NRAP 38 sanctions is denied.

Accordingly, as the district court properly denied judicial review and attorney fees and costs, we affirm the court's order.

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Robert Eisenberg, Settlement Judge
Diaz & Galt, LLC
Piscevich & Fenner
Washoe District Court Clerk

¹²See U.S. Design & Constr. v. I.B.E.W. Local 357, 118 Nev. 458, 462, 50 P.3d 170, 173 (2002) (noting generally that a district court's decision with respect to attorney fees and costs is reviewed for abuse of discretion).