

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAL-MART, INC.,
Appellant,
vs.
HEIDI HART,
Respondent.

No. 48002

FILED

MAY 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district order granting a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

In the underlying proceedings, respondent requested appellant to approve back surgery under her workers' compensation claim, which had been accepted for back strain. The parties agree that respondent had a prior non-industrial back injury and previously underwent lumbosacral spine reconstruction surgery. After appellant's doctors evaluated respondent, appellant denied her request for surgery. Subsequently, an appeals officer upheld appellant's decision to deny surgery, concluding that, although under NRS 616C.175(1) an employee with a non-work-related preexisting condition can claim compensation for a subsequent work-related injury that aggravates the preexisting condition, a preponderance of the evidence in this case established that that respondent's subsequent work-related injury was not a contributing cause of her resulting condition necessitating surgery. The district court granted respondent's petition for judicial review and reversed the appeals officer's decision. This appeal followed.

In the context of an appeal from a district court order resolving a petition for judicial review of an administrative decision, we, like the district court, examine the administrative decision for clear error or an arbitrary abuse of discretion.¹ While purely legal determinations are reviewed independently, the appeals officer's fact-based conclusions of law are entitled to deference and may not be disturbed if they are supported by substantial evidence.² "Substantial evidence is that 'which a reasonable person might accept as adequate to support a conclusion.'"³ Courts may not substitute their judgment for that of the appeals officer as to "the weight of the evidence."⁴ Our review is limited to the record before the appeals officer.⁵

Here, the administrative record demonstrates that appellant underwent a lumbar fusion surgery to treat her non-industrial back injury in 2001. Subsequently, appellant sustained an industrial injury, a lumbar strain, to her lower back in 2004. The record reflects that five medical doctors evaluated and treated appellant after her 2004 injury, and four of them concluded that appellant's industrial injury was not a substantial contributing cause to her present condition. The appeals

¹Construction 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).

²Ayala, 119 Nev. at 235, 71 P.3d at 491.

³Ayala, 119 Nev. at 235, 71 P.3d at 491-92 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1032, 862 P.2d 1197, 1199 (1993)).

⁴Chalue, 119 Nev. at 352, 74 P.3d at 597.

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

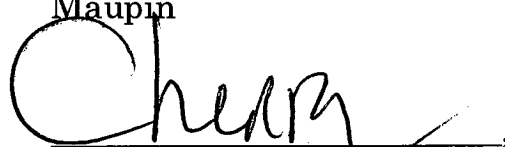
officer accorded more weight to these four doctors' opinions than to the fifth doctor's opinion and thus upheld appellant's denial of surgery.

Having reviewed the administrative record and considered the parties' arguments, we conclude that the appeals officer's determination was not affected by clear error or an abuse of discretion in concluding that appellant's industrial injury was not a substantial contributing cause of appellant's present condition.⁶ Accordingly, we

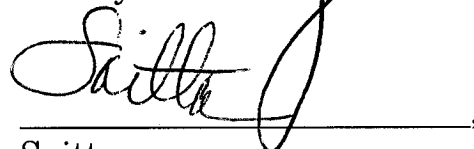
ORDER the judgment of the district court REVERSED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Kenneth C. Cory, District Judge
Eugene Osko, Settlement Judge
Lynne & Associates
Craig P. Kenny & Associates
Eighth District Court Clerk

⁶NRS 616C.175(1).