

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY LOPEZ,
Appellant,
vs.
US FOOD SERVICE,
Respondent.

No. 48419

FILED

APR 03 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Tony Lopez challenges an appeals officer's decision declining to extend the scope of the claim beyond lumbar and thoracic spine strains, denying his requests for temporary total disability (TTD) benefits, and closing his claim.

In the context of an appeal from a district court order denying a petition for judicial review of an administrative decision, this court examines the administrative decision for clear error or 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 will not be disturbed if supported by substantial evidence.² "Substantial evidence is that 'which a reasonable person might

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

²Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

accept as adequate to support a conclusion.”³ Nor will this court substitute its judgment for that of the appeals officer as to “the weight of the evidence.”⁴ Further, we may not alter credibility determinations of witnesses.⁵ Our review is limited to the record before the appeals officer.⁶

Lopez argues that the appeals officer abused her discretion when considering the evidence regarding the scope and closure of his claim. Lopez also contends that the appeals officer committed clear error by failing to apply the requisite statutory provisions when determining his TTD benefits.

A workers’ compensation claimant must prove by a preponderance of the evidence that his injuries “arose out of and in the course of his employment.”

Having reviewed the record and considered the parties’ arguments, we conclude that the appeals officer’s determinations regarding the claim’s scope and closure are supported by substantial evidence. In particular, the appeals officer’s determination that Dr. Mark Kabins’s testimony lacked credibility was based on Dr. Kabins’s admission that he had earlier sought payment for treatment of Lopez’s injury from private insurance, at which time he had not designated the injury as industrial. Thus, as the appeals officer’s credibility determination was not

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

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

⁵Id. at 354, 74 P.3d at 598.

⁶Ayala, 119 Nev. at 235, 71 P.3d at 491.

arbitrary or capricious or otherwise characterized by an abuse of discretion, we may not review that determination.⁷ Further, the report signed by Dr. Curtis Poindexter states that the additional and aggravated injuries sought by Lopez are non-industrial. A review of the record in its entirety indicates no clear error or abuse of discretion by the appeals officer in determining that Lopez failed to demonstrate the requisite causal connection in this case with respect to the non-accepted injuries.⁸ Consequently, as the accepted injuries had been resolved, his claim was properly closed.

With regard to Lopez's argument that he is entitled to TTD benefits, substantial evidence supports the appeals officer's decision upholding the denial of those benefits. Although Lopez testified that he attempted to find light-duty work with US Food, only to be told none was available, US Food's Safety Risk Security Specialist, Jeffrey Porter, testified that Lopez was offered and accepted a filing job, but that he quit that job after 15-20 minutes. The appeals officer believed the specialist's testimony, which supports the officer's conclusion that Lopez was not entitled to TTD benefits.⁹ Because the appeals officer's decision was based

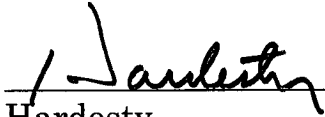
⁷Chalue, 119 Nev. at 354, 74 P.3d at 598 (citing NRS 233B.135(3)); see also Clark County School Dist v. Bundley, 122 Nev. ___, 148 P.3d 750, 758 n. 32 (2006) (defining "arbitrary and capricious").

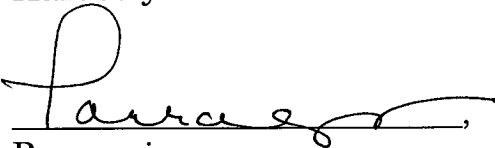
⁸See NRS 616C.150(1).

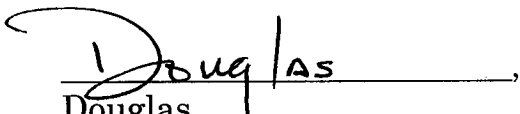
⁹See NRS 616C.475(5)(b) (stating that temporary total disability benefits are not permitted when the employer offers the employee suitable light-duty employment).

on a credibility determination, it is not open to appellate review.¹⁰ And since substantial evidence in the record supports the appeals officer's decision, the district court properly denied judicial review.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Carolyn Worrell, Settlement Judge
Esther Rodriguez
Law Offices of David Benavidez
Eighth District Court Clerk

¹⁰Langman v. Nevada Administrators, Inc., 114 Nev. 203, 209, 955 P.2d 188, 192 (1998).

¹¹We have considered Lopez's arguments that the appeals officer applied the wrong statutory provisions in determining Lopez's TTD benefits, and we conclude that they lack merit.