

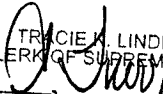
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH CINO,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Respondent.

No. 49040

FILED

AUG 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an occupational disease matter. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Joseph Cino is a peace officer with respondent Las Vegas Metropolitan Police Department (LVMPD). Cino suffers from both heart disease and a right branch retinal artery occlusion (BRAO). While Cino was granted workers' compensation for his heart disease, the Nevada Department of Administration appeals officer denied Cino's workers' compensation claim for his BRAO based on NRS 616C.160.¹ Cino petitioned for judicial review of the appeals officer's decision, which the district court denied. On appeal, Cino argues that the district court erred

¹NRS 616C.160 was consistently applied below in determining this case. We take this opportunity to note that NRS 616C.160 governs benefits for newly developed injury or disease for industrial injury insurance claims, while Cino's heart disease claim appears to constitute an occupational disease that is governed by NRS Chapter 617. See NRS 617.457 (stating that heart disease may constitute an occupational disease for firefighters and police officers); SIIS v. Conner, 102 Nev. 335, 337, 721 P.2d 384, 385 (1986). However, this error was not raised at any point below, so we do not reach it here.

in denying his petition for judicial review because the appeals officer applied an inappropriate standard of proof and erred, as a matter of law, in finding that Cino's BRAO was not a compensable part of his industrial heart disease claim. We disagree. As the parties are familiar with the facts of the case, we do not recount them except as necessary to our disposition.

Standard of review

In reviewing an appeals officer's decision, this court's role is the same as the district court's: to review "an appeals officer's decision for clear error or arbitrary abuse of discretion." Manwill v. Clark County, 123 Nev. 238, 241, 162 P.3d 876, 879 (2007). In so doing, this court gives deference to the "appeals officer's fact-based conclusions of law" and will not disturb them "if supported by substantial evidence."² Id. Additionally, this court will not "substitute our judgment for that of the appeals officer as to the weight of the evidence on a question of fact." Id. However, "we independently review the appeals officer's purely legal determinations, including those of statutory construction." Id. at 242, 162 P.3d at 879.

Appeals officer reached the correct result

NRS 616C.160 governs compensation for newly developed industrial injuries or diseases.³ According to NRS 616C.160, if an injured

²"Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." Manwill, 123 Nev. at 241 n.4, 162 P.3d at 879 n.4.

³Cino alleges that because he relied upon NRS 616C.175 below, which he contends is similar to NRS 617.366, this court should review his case pursuant to NRS 617.366, even though he raises the application of NRS 617.366 for the first time on appeal. We decline to do so. Dermody v.

continued on next page . . .

employee seeks medical treatment for a “newly developed injury or disease” and the employee’s medical records for the previously reported injury do not reference the new injury or disease, then the new injury or disease for which treatment is being sought “must not be considered part of the employee’s original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.” A medical expert’s opinion regarding causation of an injury or disease “must be stated to a reasonable degree of medical probability.” Morsicato v. Sav-On Drug Stores, Inc., 121 Nev. 153, 158, 111 P.3d 1112, 1116 (2005).

Here, the appeals officer stated that a consequential injury is compensable if it is “directly related to the industrial condition.” Accordingly, the appeals officer denied Cino’s workers’ compensation claim for his BRAO because the appeals officer found that Cino failed to demonstrate that the BRAO was “directly related” to his heart disease, which qualified as an industrial condition. In so finding, the appeals officer noted that neither Dr. Cres P. Miranda, Jr., nor Dr. Allen B. Trach was “able to opine to a reasonable degree of medical certainty that the vascular-related BRAO was more likely directly related to [Cino’s] heart disease as compared, for example, to the disease of his carotid arteries or his high cholesterol.”

... continued

City of Reno, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997) (noting that “[a]rguments raised for the first time on appeal need not be considered by this court”).

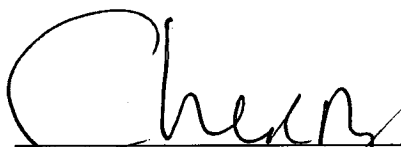
We agree with Cino that the plain language of NRS 616C.160 does not suggest that the medical expert's evidence must demonstrate a direct causal relationship between the new injury and the original industrial condition. We also note that the district court correctly observed that the appeals officer applied the incorrect standard of a "reasonable degree of medical certainty," as opposed to the correct standard of a "reasonable degree of medical probability." (Emphasis added.)

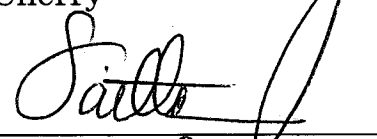
However, there is no evidence that the district court abused its discretion in denying Cino's petition for judicial review. The appeals officer's fact-based conclusion that Cino's BRAO was not caused by his heart disease, a conclusion to which this court defers, is supported by substantial evidence. See Manwill, 123 Nev. at 241, 162 P.3d at 879. As previously noted, it is for the appeals officer to determine what weight is given to each piece of evidence. Id.; see Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (noting that this court "will not reweigh the credibility of witnesses on appeal; that duty rests within the trier of fact's sound discretion"). In this case, the appeals officer gave the most weight to the reports indicating that while Cino's BRAO was perhaps related to his heart disease, it was not necessarily caused by it. For example, Dr. Miranda opined that Cino's BRAO was "likely secondary to his high cholesterol level [and] his mild insulin resistance," and Dr. Trach listed numerous conditions that could cause BRAO, heart disease being only one such possibility. We conclude that this evidence is enough for a reasonable person to conclude that, pursuant to NRS 616C.160, Cino did not qualify for workers' compensation as to his BRAO because he did not prove that the BRAO was caused, to any degree, by his heart disease.

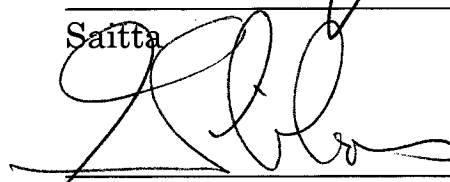
Therefore, we conclude that the district court did not abuse its discretion when it denied Cino's petition for judicial review. As the district court suggested, the appeals officer reached the right result, although he applied the wrong standard. Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000).

Accordingly, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Nathaniel J. Reed, Settlement Judge
Nevada Attorney for Injured Workers/Las Vegas
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk