

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRYSTYNA SHEEHAN,  
Appellant,  
vs.  
SMITH'S FOOD AND DRUG,  
Respondent.

No. 49135

**FILED**

APR 11 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; Douglas W. Herndon, Judge.

Appellant Krystyna Sheehan sustained an industrial injury in February 2000 during her employment with respondent. Sheehan ultimately accepted a partial permanent disability award and her claim was closed in 2000. After undergoing further medical evaluations in 2003, however, Sheehan requested that her claim be reopened, asserting that her neck problems from the original industrial injury had worsened. Her claim reopening request was denied, and she administratively appealed. An appeals officer held a hearing and ultimately denied Sheehan's request to reopen the claim. The district court subsequently denied judicial review of the appeals officer's decision, and Sheehan has appealed.

On appeal from a district court order denying judicial review in a workers' compensation matter, we, like the district court, review the

appeals officer's decision for clear error or an abuse of discretion.<sup>1</sup> Although we independently review the appeals officer's purely legal determinations,<sup>2</sup> the appeals officer's fact-based conclusions of law are entitled to deference and will not be disturbed if supported by substantial evidence.<sup>3</sup> Evidence is substantial if a reasonable person could accept it as adequately supporting a conclusion.<sup>4</sup> We may not substitute our judgment for that of the appeals officer as to the weight of the evidence on a question of fact<sup>5</sup> or the credibility of a witness.<sup>6</sup>

On appeal, Sheehan contends that the appeals officer erred as a matter of law by applying an evidentiary burden that was improper under NRS 616C.390(1) and factually impossible to meet, because it required her to prove that the condition reflected on a magnetic resonance image (MRI) taken at the time of her injury in 2000 had since changed, and the 2000 MRI was no longer available. Further, Sheehan argues that the appeals officer abused her discretion by failing to give proper weight to credible evidence and by making factual findings not supported by the record.

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<sup>1</sup>Construction 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).

<sup>2</sup>Chalue, 119 Nev. at 351, 74 P.3d at 597.

<sup>3</sup>Ayala, 119 Nev. at 235, 71 P.3d at 491-92.

<sup>4</sup>Id.

<sup>5</sup>Chalue, 119 Nev. at 352, 74 P.3d at 597.

<sup>6</sup>Id. at 354, 74 P.3d at 598.

With respect to Sheehan's argument that the appeals officer erred as a matter of law by creating an evidentiary burden that was factually impossible to meet, we conclude that Sheehan mischaracterizes the burden of proof used by the appeals officer. The appeals officer correctly stated in her order that Sheehan was required to show, by a preponderance of the evidence, changed circumstances warranting an increase in compensation.<sup>7</sup> As Sheehan notes, the appeals officer had issued an interim order asking that an independent radiologist review and compare a 2003 MRI with the 2000 MRI taken at the time of the original industrial injury, so as to better understand any changes to Sheehan's medical condition. While the inability to locate the original MRI made this order factually impossible to comply with, we do not construe the appeals officer's attempt to review additional medical information as demonstrating that the appeals officer was applying a heightened evidentiary burden. Accordingly, as the record shows no indication that the appeals officer applied an evidentiary standard other than that expressly set forth in the administrative order, we conclude that the appeals officer evaluated Sheehan's request to reopen her claim under the proper preponderance of the evidence standard.

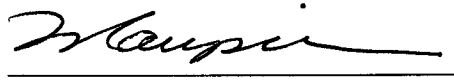
Further, after considering the parties' briefs and reviewing the record, we conclude that the appeals officer's factual findings are based on substantial evidence and that, as a result, the appeals officer did not abuse her discretion in determining that Sheehan had not met her evidentiary burden to prove a change in circumstances that required

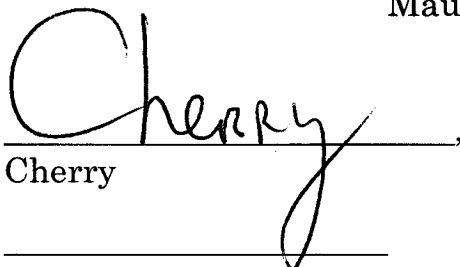
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<sup>7</sup>NRS 616C.390(1); SIIS v. Hicks, 100 Nev. 567, 569, 688 P.2d 324, 325 (1984).

reopening Sheehan's claim.<sup>8</sup> In weighing the evidence, the appeals officer determined that Dr. Daniel Lewis's report was speculative and unpersuasive, and thus gave that report little weight. It is not our role to reweigh the appeals officer's determinations regarding the weight of the evidence.<sup>9</sup> Additionally, of the remaining evidence Sheehan points to—the MRI interpreted by Dr. Patrick Boland and the medical examination report by Dr. Michael Seiff—a reasonable person could conclude that these reports fail to demonstrate, by a preponderance of the evidence,<sup>10</sup> a change of circumstances primarily caused by the injury for which the claim was originally made.<sup>11</sup> Since Sheehan had the burden of proof and the doctors' reports provided by Sheehan were not enough to require the reopening of her claim, the appeals officer's order was not affected by an abuse of discretion or clear legal error, and the district court properly denied judicial review. Therefore, we affirm the district court's order denying judicial review.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

<sup>8</sup>See NRS 616C.390(1); SIIS, 100 Nev. at 569, 688 P.2d at 325.

<sup>9</sup>Chalue, 119 Nev. at 352, 74 P.3d at 597.

<sup>10</sup>See SIIS, 100 Nev. at 569, 688 P.2d at 325. See also Clark County Sch. Dist. v. Bundley, 122 Nev. \_\_\_, \_\_ n. 26, 148 P.3d 750, 757 n. 26 (2006).

<sup>11</sup>See NRS 616C.390(1).

cc: Hon. Douglas W. Herndon, District Judge  
William F. Buchanan, Settlement Judge  
Nevada Attorney for Injured Workers/Las Vegas  
Santoro, Driggs, Walch, Kearney, Holley & Thompson  
Eighth District Court Clerk