


IN THE SUPREME COURT OF THE STATE OF NEVADA

WENDELL DEAN GENTRY,
Appellant,
vs.
NEVADA ADMINISTRATORS, INC.,
Respondent.

No. 49436

FILED

APR 14 2008

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; David Wall, Judge.

In appeals regarding occupational disease matters, we, like the district court, review the appeals officer's decision for abuse of discretion.¹ Although the appeals officer's purely legal determinations are independently reviewed, we give deference to the appeals officer's fact-based conclusions of law, which will not be disturbed if they are supported by substantial evidence.² We may not substitute our judgment for that of the appeals officer as to the weight of the evidence on a question of fact,³ and our review is limited to the record before the appeals officer.⁴

¹Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-92 (2003).

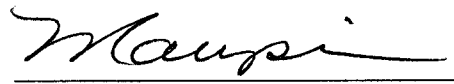
²Id. Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion, and it can be inferred from a lack of particular evidence. Wright v. State, Dep't of Motor Vehicles, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005).


³Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839, 842 (1997).


⁴Id. at 536, 936 P.2d at 842.

Here, having reviewed the parties' briefs and supporting documentation, we conclude that substantial evidence supports the appeals officer's determination that appellant Wendell Dean Gentry failed to show, by a preponderance of the evidence, that his back and leg condition arose out of and in the course of his employment as a plumber, as is required under NRS 617.358 to obtain occupational disease benefits. In particular, while the record contains several years' worth of medical reporting on Gentry's back and leg condition, it reveals no evidence—other than reports repeating Gentry's own surmises—that causally connects his condition to his work, and the physician who completed Gentry's C-4 form was unable to connect his condition to his work. Accordingly, as the appeals officer's decision is based on substantial evidence,⁵ we affirm the district court's order denying Gentry's petition for judicial review.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁵See NRS 617.440 (describing when a disease is deemed to have arisen out of and in the course of employment); Wright, 121 Nev. at 125, 110 P.3d at 1068 (recognizing that substantial evidence can be inferred from a lack of relevant evidence). To the extent that Gentry challenges the appeals officer's conclusion that he failed to demonstrate an industrial injury, that conclusion is based on substantial evidence. See NRS 616C.150.

cc: Hon. David Wall, District Judge
Janet Trost, Settlement Judge
Clark & Richards
Wolfenzon Schulman & Ryan
Eighth District Court Clerk