

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOE JARAMILLO,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 50326

FILED

NOV 05 2008

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. J. JARVIS
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of an appeals officer's decision to deny the reopening of a workers' compensation claim. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Joe Jaramillo sought to reopen his workers' compensation claim in proceedings before the appeals officer. Jaramillo had previously been awarded workers' compensation benefits for an industrial injury to his back, sustained in 1994 when, while carrying approximately 150-200 pounds of rebar, he stepped in a hole. After his claim was closed, Jaramillo sought to reopen it, due to a nonindustrial accident in 2002, when he fell while descending a flight of stairs.

The appeals officer determined that Jaramillo had failed to establish that his industrial injury was the primary cause of the change in his physical condition from his nonindustrial injury. The appeals officer, apparently referring to NRS 616C.175(2), also concluded that respondent Employers Insurance Company of Nevada (EICON) had established, by a preponderance of the evidence, that Jaramillo's nonindustrial injury was a substantial contributing factor to his subsequent medical condition. In making these determinations, the appeals officer found the medical evidence presented by Dr. Michael Fry and Dr. Paul Phillips more

persuasive and accurate than the medical evidence provided by Dr. Jay Morgan and Dr. William Dawson. Accordingly, the appeals officer denied Jaramillo's request to reopen the claim.

Jaramillo subsequently filed a petition for judicial review in the district court. The district court, concluding both that substantial evidence in the record supported the appeals officer's findings and that the appeals officer did not err as a matter of law in her application of the statutory burden of proof, affirmed the appeals officer's decision by denying judicial review. Jaramillo appealed.

On appeal, Jaramillo argues that no reasonable mind could conclude, after reviewing the record, that his industrial injury was not the primary cause or a substantial contributing cause of his condition after the nonindustrial accident.¹ More specifically, Jaramillo contends that the basis for the appeals officer's credibility determinations, that Drs. Fry and Phillips performed more comprehensive reviews than Drs. Morgan and Dawson, is not supported by substantial evidence. Jaramillo further contends that the appeals officer erred as a matter of law by determining that EICON's burden of proof under NRS 616C.175 was dependent on Jaramillo first establishing that reopening was appropriate under NRS 616.390.

¹See NRS 616C.390(1)(b) (requiring the insurer to reopen a claim if it is shown, among other things, that "[t]he primary cause of the change of circumstances is the injury for which the claim was originally made"); see also NRS 616C.175(2) (deeming a nonemployment-related aggravation of an industrial injury to be compensable "unless the insurer can prove by a preponderance of the evidence that the [industrial] injury . . . is not a substantial contributing cause of the resulting condition").

Standard of review

“The function of this court in reviewing an administrative decision is identical to the district court’s.”² We, like the district court, decide purely legal questions de novo, without deference to the appeals officer.³ Regarding questions of fact, however, this court’s review is limited to determining whether there was substantial evidence in the record to support the appeals officer’s determination.⁴ Substantial evidence is that which may be accepted by a reasonable mind as adequately supporting a conclusion.⁵ Although this court may not substitute its judgment for that of the appeals officer regarding the weight of the evidence,⁶ or issues of credibility,⁷ this court will reverse an appeals officer’s decision “that is clearly erroneous in light of reliable, probative, and substantial evidence on the whole record.”⁸

²Riverboat Hotel Casino v. Harold’s Club, 113 Nev. 1025, 1029, 944 P.2d 819, 822 (1997).

³Id.

⁴SIIS v. Christensen, 106 Nev. 85, 87-88, 787 P.2d 408, 409 (1990).

⁵Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003).

⁶NRS 233B.135(3); Chalue, 119 Nev. at 352, 74 P.3d at 352.

⁷Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005).

⁸Chalue, 119 Nev. at 352, 74 P.3d at 597 (quoting United Exposition Service Co. v. SIIS, 109 Nev. 421, 425, 851 P.2d 423, 425 (1993)).

Burden of proof

Under NRS 616C.390, claims will be reopened if: (1) an increase in compensation is warranted by a change in circumstances, (2) “[t]he primary cause of the change of circumstances is the injury for which the claim was originally made,” and (3) an appropriate medical certificate accompanies the reopening application. Under NRS 616C.175(2), an individual who is accidentally injured in a manner arising out of and in the course of employment, and who “[s]ubsequently aggravates, precipitates or accelerates” the industrial injury in a manner that does not arise out of and in the course of the employment, is entitled to workers compensation “unless the insurer can prove by a preponderance of the evidence that the [industrial] injury . . . is not a substantial contributing cause of the resulting condition.” Thus, to reopen a claim due to a condition resulting from a nonindustrial accident, the claimant must show an aggravation compensable under NRS 616C.175(2), which is the primary cause of the change of circumstances warranting additional compensation.⁹

Here, Jaramillo argues that the appeals officer misconstrued NRS 616C.175(2) in concluding that the nonindustrial accident was a substantial contributing factor to Jaramillo’s subsequent condition. According to Jaramillo, EICON’s counsel stated during a deposition that he did not dispute that there was an aggravation of the industrial injury, and thus, EICON conceded that the nonindustrial injury was an “aggravation” of the industrial injury. Jaramillo also points out that Dr.

⁹See Las Vegas Hous. Auth. v. Root, 116 Nev. 864, 8 P.3d 143 (2000) (providing the proper analysis, albeit under statutes subsequently amended).

Fry, one of the doctors whom the appeals officer found more credible, stated that Jaramillo's injury was an aggravation of the industrial injury. Jaramillo also contends that the evidence he presented established that the nonindustrial accident resulted in an aggravation of the industrial injury. EICON, however, contends that Jaramillo failed to establish that his condition subsequent to the nonindustrial injury was primarily caused by the industrial injury, as required by NRS 616C.390(1)(b).

Contrary to Jaramillo's arguments, the appeals officer correctly applied NRS 616C.175(2). Under the language of the statute, in order to shift the burden to the insurer, Jaramillo must demonstrate an aggravation, acceleration, or precipitation of the original industrial injury. Nothing in the record demonstrates that EICON conceded, either during the administrative proceedings or after, that the nonindustrial accident was an "aggravation" of the industrial injury for the purposes of NRS 616C.175(2). Further, while Dr. Fry did label, during the course of his deposition, the nonindustrial injury as an "aggravation," a review of the entire deposition indicates that Dr. Fry also expressly declined multiple times in the deposition to term the nonindustrial injury an "aggravation" of the industrial injury. Finally, although Jaramillo argues that he presented sufficient evidence to the appeals officer to meet the requirements of NRS 616C.390, the record also contains evidence supporting the appeals officer's conclusion that Jaramillo did not meet the requirements of NRS 616C.390 and, as explained further below, this court will not reweigh the appeals officer's judgments regarding the weight of the evidence.¹⁰

¹⁰See NRS 233B.135(3); Chalue, 119 Nev. at 352, 74 P.3d at 352.

The appeals officer's credibility determinations

Jaramillo contends that the appeals officer abused her discretion in relying primarily on the testimony of Dr. Fry and Dr. Phillips, after determining that they had performed a more thorough review of Jaramillo's files and medical records than Dr. Dawson and Dr. Morgan. These credibility determinations, Jaramillo argues, are not supportable because the record indicates that Dr. Fry and Dr. Phillips may not have performed thorough reviews, and that the appeals officer's determination that Dr. Morgan was less credible is based solely on unduly speculative testimony by Dr. Phillips.

This court may not substitute its judgment for that of the appeals officer regarding the weight of the evidence,¹¹ and we will not disturb credibility determinations.¹² After reviewing the briefs on appeal and the documents included in the appendices, we conclude that, as the appeals officer's reasoning is not clearly erroneous, Jaramillo is merely asking this court to impermissibly reweigh the evidence presented to the appeals officer. We decline to reweigh the appeals officer's credibility determinations and therefore reject Jaramillo's arguments here.

Substantial evidence

Thus, having concluded that the appeals officer applied the correct statutory burden of proof and that we will not reweigh the appeals officer's credibility determinations regarding Dr. Fry, Dr. Phillips, Dr. Morgan, and Dr. Dawson, our only remaining inquiry is to determine whether substantial evidence supports the appeals officer's conclusion that


¹¹Id.

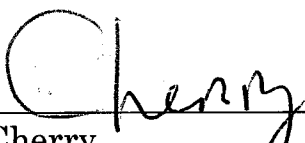
¹²Menditto, 121 Nev. at 283-84, 112 P.3d at 1097.


Jaramillo failed to establish, as required by NRS 616C.390, that the 1994 industrial injury was the primary cause of the change in his physical condition.

Here, the appeals officer concluded that, based on the testimony of Drs. Fry and Phillips, Jaramillo had not established, under NRS 616C.390, that his condition was primarily caused by the industrial injury. Dr. Fry's testimony provided multiple instances in which he expressly declined to connect Jaramillo's condition to the industrial injury and which he stated his opinion that the nonindustrial accident was the reason for Jaramillo's resulting condition. Dr. Phillips also provided testimony that he believed that the symptoms Jaramillo developed after the nonindustrial injury that prompted the surgery were attributable to the nonindustrial injury rather than to the industrial injury. The testimony by Drs. Fry and Phillips could lead a reasonable mind to conclude that the industrial injury was not the primary cause of Jaramillo's condition. Substantial evidence, therefore, supports the appeals officer's conclusion that Jaramillo failed to establish that his claim should be reopened. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Carolyn Worrell, Settlement Judge
Diaz & Galt, LLC
Beckett, Yott & McCarty/Reno
Washoe District Court Clerk