

IN THE SUPREME COURT OF THE STATE OF NEVADA

FLORENTINA RUIZ-MIRAMONTES,  
Appellant,  
vs.  
BOULDER STATION/STATION  
CASINOS INC.,  
Respondent.

No. 51814

FILED

OCT 08 2009

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation action. Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

BACKGROUND

On December 13, 2004, appellant Florentina Ruiz-Miramontes suffered an injury to her lumbar spine while lifting plates during her employment as a porter for respondent Boulder Station/Station Casinos, Inc. The parties are in agreement that this injury is compensable as a workers' compensation claim, and the claim was accepted by Boulder Station's workers' compensation administrator on January 6, 2005. Ruiz-Miramontes was initially treated with physical therapy and prescription medication. A CT myelogram, however, revealed a right paracentral disc protusion and a broad-based disc bulge, and a discogram uncovered an asymptomatic disc, global internal disc disruption, and moderate to severe disc degeneration. Based on the results of these diagnostic tests, surgery in the form of an L4-5 and L5-S1 lumbar interbody fusion with pedicle screw stabilization was performed by Dr. Gary Flangas, M.D., on Ruiz-Miramontes. After monitoring Ruiz-Miramontes's response to the surgery,

Dr. Flangas determined that she had reached maximum medical improvement and ordered a functional capacity evaluation.

Marcello Salzano, D.C., thereafter evaluated Ruiz-Miramontes for permanent partial disability and concluded that she had an 11-percent whole-person impairment.<sup>1</sup> Salzano's evaluation was then sent, per agreement between the parties, to Richard Kudrewicz, M.D., for review. Dr. Kudrewicz subsequently wrote a report which, according to Ruiz-Miramontes, disagreed with Salzano's rating and instead found her to have a 19-percent whole-person impairment. Boulder Station asserts that this report approves Salzano's 11-percent whole-person impairment rating and endorses its use to set Ruiz-Miramontes's award.

After reviewing Dr. Kudrewicz's report, Boulder Station's workers' compensation claims administrator offered Ruiz-Miramontes an award based on an 11-percent whole-person impairment. Ruiz-Miramontes administratively appealed, and a hearing officer affirmed the claims administrator's decision to award an 11-percent whole-person impairment, determining that while Dr. Kudrewicz's report criticizes the American Medical Association's (AMA) guidelines for rating permanent impairment, the report does not find any technical flaw in Salzano's rating. Ruiz-Miramontes then appealed the hearing officer's decision to an appeals officer, who affirmed the decision, determining that Ruiz-Miramontes failed to establish any error in Salzano's rating. Ruiz-

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<sup>1</sup>In fact, Salzano rated Ruiz-Miramontes as a 13-percent whole-person impairment, 2 percent of which was apportioned because Ruiz-Miramontes had previously received a 2-percent whole-person impairment award. This 2 percent reduction is not challenged by Ruiz-Miramontes on appeal.

Miramontes then filed a petition for judicial review in district court, which the district court denied after determining that the appeals officer's decision was supported by substantial evidence. Ruiz-Miramontes has now appealed to this court.

### DISCUSSION

On appeal, Ruiz-Miramontes argues that the appeals officer ignored substantial evidence supporting a permanent partial disability award higher than Salzano's 11-percent rating, and thus the decision to adopt the 11-percent rating was clearly erroneous and an arbitrary abuse of discretion. In other words, Ruiz-Miramontes asserts that she should have been awarded the 19-percent whole-person impairment discussed in Dr. Kudrewicz's report rather than the 11-percent whole-person impairment rating assessed by Salzano, as Dr. Kudrewicz's report discusses problems with Salzano's rating and explains why a 19-percent rating is more sound in this case. Boulder Station, however, argues that Dr. Kudrewicz's report only raises personal disagreement with certain methodologies or theories in the AMA Guidelines, and that the report expressly notes that the doctor does not find any technical errors with Salzano's rating.

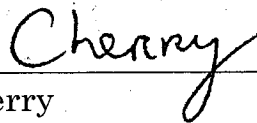
This court reviews an administrative decision to determine whether the agency's decision constituted an abuse of discretion. Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005). While purely legal determinations are reviewed de novo, id., on a question of fact, this court reviews for clear error and will not overturn an appeals officer's determination that is supported by substantial evidence. Day v. Washoe County Sch. Dist., 121 Nev. 387, 389, 116 P.3d 68, 69 (2005). "While this court will not substitute its judgment for that of the

agency as to the weight of the evidence, this court will reverse an agency decision that is clearly erroneous in light of reliable, probative, and substantial evidence on the whole record.” Day at 387, 116 P.3d at 69 (internal quotations omitted). Substantial evidence is “that which ‘a reasonable mind might accept as adequate to support a conclusion.’” State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Permanent partial disability ratings are to be assessed using the American Medical Association’s Guides to the Evaluation of Permanent Impairment, 5th edition. See NRS 616C.110(1)(a); NRS 616C.490; see also NRS 616C.490(1) (noting that “disability” and “impairment of the whole man” are equivalent terms).

Here, a review of Dr. Kudrewicz’s report reveals that the doctor endorses Salzano’s 11-percent rating. For instance, the doctor expressly concludes his report by noting that “you are . . . free and clear to go ahead and use [Salzano’s] 11% impairment whole person . . . as there is nothing in the [AMA Guidelines] which contradicts that.” Further, other portions of the report state that “there is nothing wrong with the rating,” and “technically there is nothing in the Guides which keep you from allowing the impairment as found by the rater.” While Kudrewicz does note the possibility of an alternative 19-percent whole-person impairment rating under the AMA Guidelines, and even at some points advocates for this higher rating, the doctor is nevertheless clear that Salzano’s rating is valid. From this, we conclude that a reasonable mind could conclude that Salzano provided an acceptable rating of Ruiz-Miramontes’s whole-person impairment. Thus, the appeals officer’s decision to rely on Salzano’s lower rating is supported by substantial evidence. See State, Emp. Security,

102 Nev. at 608, 729 P.2d at 498 (defining substantial evidence). Accordingly, Ruiz-Miramontes is, effectively, requesting this court to substitute our judgment for that of the appeals officer's regarding the weight to be assigned Salzano's rating, something this court will not do. See Day, 121 Nev. at 389, 116 P.3d at 69 (explaining that this court will not substitute its judgment for that of the appeals officer as to the weight of the evidence). Thus, we agree with the district court that the appeals officer's decision should not be set aside and accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

cc: Chief Judge, Eighth Judicial District  
Hon. James A. Brennan, Senior Judge  
Janet Trost, Settlement Judge  
Scott R. Schreiber, A Professional Corporation  
Lewis Brisbois Bisgaard & Smith, LLP  
Eighth District Court Clerk