

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA READY MIX,
Appellant,
vs.
RAYMOND SMITH,
Respondent.

No. 51986

FILED

OCT 20 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

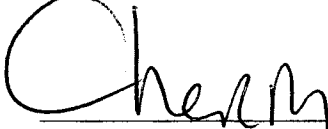
This is an appeal from a district court order denying a petition for judicial review in an occupational disease matter. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

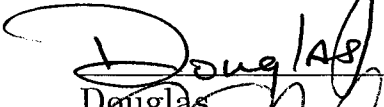
In March 2006, respondent Raymond Smith, a truck driver for appellant Nevada Ready Mix's sand and gravel department, filed a claim for workers' compensation benefits asserting that he contracted coccidiomycosis as a result of breathing in dirt while traveling to different job sites and unloading his truck. Nevada Ready Mix's workers' compensation insurer denied Smith's claim for benefits, and Smith administratively appealed. A hearing officer reversed the denial of Smith's claim and an appeals officer affirmed the hearing officer's decision, determining that Smith had established a compensable claim. Nevada Ready Mix then petitioned for judicial review and the district court entered an order denying the petition. Nevada Ready Mix has now appealed.

Having reviewed the parties' briefs and the record on appeal, we conclude that Nevada Ready Mix's arguments on appeal lack merit and that the appeals officer did not abuse her discretion in determining that Smith had established a compensable claim. Grover C. Dils Med. Ctr. v.

Menditto, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005); Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003), rejected on other grounds by Five Star Capitol Corp. v. Ruby, 124 Nev. ___, 194 P.3d 709 (2008). The appeals officer's decision is supported by substantial evidence, State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 607-08, 729 P.2d 497, 498 (1986), and by physician testimony that satisfies Nevada's requirement that such testimony state to a reasonable degree of medical probability that the condition in question was caused by employment. See United Exposition Service Co. v. SIIS, 109 Nev. 421, 424-25, 851 P.2d 423, 425 (1993). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Douglas


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Persi J. Mishel, Settlement Judge
Lynne & Associates
Edward M. Bernstein & Associates/Henderson
Eighth District Court Clerk