

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN KAUFMAN,  
Appellant,  
vs.  
S & C CLAIMS SERVICES, INC.,  
Respondent.

No. 52811

**FILED**

JAN 20 2010

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 matter. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Kevin Kaufman challenges an administrative appeals officer's decision denying him workers' compensation benefits, under NRS 616C.230(1)(d), for testing positive for methamphetamine hours after his workplace injury. In addition to arguing that the appeals officer's decision is not supported by substantial evidence, Kaufman seeks to have this matter remanded to the appeals officer pursuant to NRS 233B.131(2) so that he can present additional evidence.

Having reviewed the parties' briefs and the record on appeal, we conclude that the appeals officer's decision is supported by substantial evidence and is not otherwise affected by error of law or an abuse of discretion. NRS 233B.135(3)(f) (allowing an administrative decision to be set aside when it is arbitrary or capricious or constitutes an abuse of discretion); Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 595 (2003) (stating an administrative decision may be set aside if it is clearly erroneous in light of the reliable, probative, and substantial evidence in the record as a whole); Desert Valley Constr. v. Hurley, 120 Nev. 499, 502, 96 P.3d 739, 741 (2004) (explaining that evidence is substantial when a reasonable mind might accept it as adequate to

support a conclusion). Kaufman was seriously injured at work when he was run over by heavy machinery. Tests taken at the hospital approximately three hours later that morning indicated that he had methamphetamine in his blood, for which he did not have a lawful prescription. At the hearing, Kaufman admitted to taking the methamphetamine earlier that morning. He further testified that he had no recollection of how the accident occurred, just that he remembered standing on the curb and the next thing he knew he was under the machine's front tire. Credible testimony was provided by one of Kaufman's co-workers that the tire causing injury to Kaufman was at least six feet from the curb on which Kaufman was originally standing when the machine began to back up.

A reasonable mind could conclude from these facts that Kaufman's illegal methamphetamine use was a proximate cause of the injuries he sustained that morning, notwithstanding the existence of other evidence in the record indicating that Kaufman did not appear intoxicated to his co-workers and that he was standing much closer to the machine than six feet. See Chalue, 119 Nev. at 352, 74 P.3d at 597 (noting that the presence of a controlled substance need only be "a" rather than "the" proximate cause). Moreover, that the record is absent any evidence stating that the amount of methamphetamine in Kaufman's blood would have intoxicated him at the time of the accident is unpersuasive. Hurley, 120 Nev. at 503-04, 96 P.3d at 742 (deferring to an appeals officer's proximate cause determination). NRS 616C.230(1)(d) places the burden of proof on the claimant to establish by a preponderance of evidence that the controlled substance did not cause the workplace injuries. Id. Because this court does not reweigh the evidence, NRS 233B.135(3); Hurley, 120

Nev. at 502, 96 P.3d at 741, we conclude on this record that setting aside the appeals officer's decision is not warranted.

Finally, regarding Kaufman's argument that the district court abused its discretion in denying his request for administrative reconsideration with additional evidence, Kaufman has not adequately demonstrated why he did not seek to introduce this evidence to the appeals officer before receiving an unfavorable decision, such as by supplementing the administrative record after the hearing date but before the appeals officer entered her decision. See Garcia v. Scolari's Food & Drug, 125 Nev. \_\_\_, \_\_\_, 200 P.3d 514, 518-19 (2009) (stating that NRS 233B.131(2)'s good reasons standard is generally not satisfied when evidence is withheld until faced with an adverse decision).

Accordingly, we affirm the district court's order denying judicial review.

It is so ORDERED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Susan Johnson, District Judge  
Carolyn Worrell, Settlement Judge  
Benson, Bertoldo, Baker & Carter, Chtd./Henderson  
Santoro, Driggs, Walch, Kearney, Holley & Thompson  
Eighth District Court Clerk