

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY WILLIAMS,
Appellant,

vs.

ASSOCIATED RISK MANAGEMENT;
VALLEY HYUNDAI; AND TRUCK
PARTS AND EQUIPMENT CO.,
Respondents.

No. 54220

FILED

JUL 14 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 action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Ricky Williams sustained an industrial injury consisting of a nose laceration and fracture in August 2003 during his employment with respondent Truck Parts and Equipment Company. The claim was closed in April 2004. After undergoing medical treatment on his neck in 2006, Williams requested that his claim be reopened, asserting that his claim was never properly closed and that his neck problems were causally related to his August 2003 industrial injury. Williams's request to reopen his claim was denied, and he administratively appealed. After holding a hearing and reviewing the evidence, the appeals officer discredited Williams's testimony and determined that the claim was properly closed and that Williams had not demonstrated a change in circumstances that warranted reopening the claim under NRS 616C.390. The district court subsequently denied Williams's petition for judicial review of the appeals officer's decision. Williams appeals, arguing that the appeals officer's decision not to reopen the claim was arbitrary and an abuse of discretion. Alternatively, Williams requests that this court

remand the matter to the appeals officer for reconsideration in light of newly discovered evidence. We reject Williams's arguments and affirm the district court's order denying judicial review.

On appeal from a district court order denying judicial review in a workers' compensation matter, we, like the district court, review the appeals officer's decision for clear error or an abuse of discretion. Garcia v. Scolari's Food & Drug, 125 Nev. ___, ___, 200 P.3d 514, 519-20 (2009); Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003). While we review purely legal questions de novo, the appeals officer's factual determinations will not be disturbed if they are supported by substantial evidence. Garcia, 125 Nev. at ___, 200 P.3d at 520. Accordingly, we will not substitute our judgment for that of the appeals officer as to the weight of the evidence or the credibility of a witness. NRS 233B.135(3); Chalue, 119 Nev. at 352, 354, 74 P.3d at 597, 599.

Claim reopening

Williams argues on appeal that he demonstrated a change in circumstances sufficient to reopen his August 2003 claim by submitting several physicians' reports and opinions attributing his current neck problems to his 2003 industrial injury. Further, Williams contends that respondents failed to present any evidence contradicting his physicians' opinions. Therefore, the only evidence presented to the appeals officer supports reopening the claim. Having reviewed the administrative record, we disagree and conclude that substantial evidence supports the appeals officer's determination not to reopen Williams's claim.

A hearing was held on Williams's request to reopen his 2003 claim, after which the appeals officer found significant discrepancies between Williams's testimony and his medical records. Evidence was presented directly contradicting Williams's testimony that he did not have

neck problems before August 2003, that Williams received medical treatment on his neck from doctors Joseph Schifini and John Thalgott from the 1990's until 2002, including several MRI's indicating a cervical spine disc bulge at C5-6, continued experiences of radiculopathy, impressions of disc degeneration and spondylosis, prescriptions for various pain relief medications, chiropractic manipulations, and approximately eight injections of epidural steroids into his neck and cervical spine. Furthermore, despite the significant and repetitive medical treatment on his neck, Williams inaccurately stated in his answers to interrogatories that he began consulting with doctors Schifini and Thalgott in 2003 and that he had no previous injuries or illnesses associated with his neck prior to that time.¹

In 2006, Williams was treating with Dr. Schifini for an unrelated industrial injury. Based on a cervical MRI ordered by Dr. Schifini, Williams requested that his August 2003 claim be reopened. Since requesting that his claim be reopened in 2006, Williams reportedly consulted with other doctors for medical treatment of his neck. The doctors' written reports were entered into evidence in which they merely opined that Williams's current neck problems are associated with his August 2003 industrial injury, without any further explanation. However, it was revealed during the hearing that their causation opinions were based on an inaccurate medical history relayed to them by Williams who

¹When questioned about his answers to the interrogatories, Williams indicated that his responses were not inaccurate because the medical treatments prior to the August 2003 industrial injury were in response to pain in his shoulder and arm, not his neck.

neglected to inform them of his pre-August 2003 neck symptoms and treatment.

After weighing the totality of the evidence presented, the appeals officer found that Williams's testimony was not credible and that the doctors' opinions were not persuasive because the doctors failed to provide sufficient explanation for their causation opinions and their opinions were based on an inaccurate medical history from Williams. As such, he denied Williams's request to reopen his claim.

It is not our role to reweigh the appeals officer's determination regarding the credibility of witnesses or the weight of the evidence. NRS 233B.135(3); Chaloe, 119 Nev. at 352, 354, 74 P.3d at 597, 599. Accordingly, we conclude that, since Williams failed to present sufficient evidence demonstrating a change of circumstances to his August 2003 claim, the appeals officer's decision not to reopen Williams's claim was not clear error or an abuse of discretion.

Newly discovered evidence

Alternatively, Williams requests that this court remand the matter back to the appeals officer for reconsideration of additional evidence that supports his theory that a previous shoulder condition was the cause of his pre-August 2003 medical treatment on his neck, and that his current neck problems are attributed to the August 2003 industrial injury. NRS 233B.131(2) allows the admission of additional evidence if the evidence "is material and . . . there [are] good reasons for failure to present it in the proceeding before the agency." We review a decision granting or denying a request to remand a matter for reconsideration of additional evidence for an abuse of discretion. Garcia, 125 Nev. at ____, 200 P.3d at 518. In this case, we conclude that Williams has not

demonstrated “good reasons” for his failure to present additional evidence to the appeals officer. See NRS 233B.131(2).

“[A] party cannot choose one trial strategy and then, faced with an adverse decision, supply additional evidence on review” absent good cause. Garcia, 125 Nev. at ___, 200 P.3d at 518 (quoting Northern Illinois Gas v. Industrial Com’n, 498 N.E.2d 327, 332 (Ill. App. Ct. 1986)). In Garcia, we adopted the analysis in McDowell v. Citibank, 734 N.W.2d 1 (S.D. 2007), wherein the claimant waited until after the hearing examiner’s decision to supply additional evidence to bolster a key witness’s credibility who had been previously discredited. Garcia, 125 Nev. at ___, 200 P.3d at 518. The McDowell court reasoned that because the witness’s testimony was a “central point” in re-opening the claim, the claimant should have anticipated the attack and could not wait until after the administrative hearing officer’s ruling to submit additional evidence. Id.

The administrative record in the instant case illustrates that the appeal was originally considered in November 2007 and continued until March 2008 to allow the parties time to submit further medical records. These additional medical records would purportedly clarify the extensive medical treatment Williams underwent on his neck and cervical spine prior to the August 2003 industrial injury. These additional records were submitted, and Williams adopted the strategy that this pre-August 2003 medical treatment was for a shoulder problem unrelated to his industrial injury. However, these additional medical records did not support Williams’s theory, and he failed to present any further evidence to support this theory.

It is clear that the pre-August 2003 medical records were a “central point” in the appeals hearing and their importance should have

been anticipated. However, despite the continuance of the administrative hearing to allow for the submission of additional medical records, Williams elected to wait until after the appeals officer's adverse decision to obtain an MRI on his shoulder and elicit distinguishing medical opinions. It is this additional medical information that Williams sought judicial review of in the district court.

Other than arguing that it is in the interest of fairness that this evidence be admitted for reconsideration, Williams fails to explain why he did not submit this evidence to the appeals officer at the time of the hearing. Therefore, we conclude that Williams has failed to present good reasons to admit the additional evidence and the district court did not abuse its discretion in denying Williams's request.

Accordingly we,

AFFIRM the order of the district court denying the petition for judicial review.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Susan Johnson, District Judge
William F. Buchanan, Settlement Judge
Benson, Bertoldo, Baker & Carter, Chtd./Henderson
Law Offices of David Benavidez
Eighth District Court Clerk