IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS PAVING CORPORATION,
Appellant,
vs.
STEVE FIX,
Respondent.

No. 54222

FILED

DEC 09 2010

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 a workers' compensation action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Respondent Steve Fix was employed as a pipelayer for self-insured appellant Las Vegas Paving Corp. (LVPC). Fix claimed that he injured his lower back while filling potholes for his employer on December 29, 2005, when he lifted up a jackhammer that was stuck in asphalt. LVPC denied the claim on the basis that Fix had not met his burden of proving when or whether there had been a compensable industrial injury because of conflicting information on claim forms submitted by Fix. Although the hearing officer affirmed LVPC's denial of the claim, the appeals officer reversed and remanded the case for an award of workers' compensation benefits. The district court subsequently denied LVPC's petition for judicial review of the appeals officer's decision and this appeal followed.

In reviewing the district court's order denying LVPC's petition for judicial review of the appeals officer's decision, this court examines the administrative decision for clear error or abuse of discretion. Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005).

Legal determinations are independently reviewed, but "the appeals officer's fact-based conclusions of law are entitled to deference and will not be disturbed if they are supported by substantial evidence . . . 'which a reasonable person might accept as adequate to support a conclusion.'" Id. (quoting Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 492 (2003), abrogated on other grounds by Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d 709 (2008)). This court will not "substitute its judgment for that of the appeals officer as to issues of credibility or the weight of the evidence." Menditto, 121 Nev. at 283-84, 112 P.2d 1097.

NRS 616A.265(1) defines injury as "a sudden and tangible happening of a traumatic nature, producing an immediate or prompt result, which is established by medical evidence[.]" Here, substantial medical evidence in the record supports the appeals officer's conclusion that Fix sustained an industrial injury to his lower back, including evidence showing that Fix had sought emergency treatment on December 30 and 31, 2005, that he began complaining of new symptoms and was unable to work due to back pain only after the December 29 incident, and that his injury was thereafter serious enough to warrant back surgery.

NRS 616C.150 places the burden of proof on the employee to show, by a preponderance of the evidence, that his injury arose out of and in the course of his employment in order to receive benefits. Here, substantial evidence also supports the appeals officer's conclusion that Fix's injury arose out of and in the course of his employment on December 29, 2005, when he forcibly pulled a jackhammer out of asphalt in which it was stuck. The appeals officer found that the discrepancies in Fix's claim forms were explained by his credible testimony that he was experiencing extreme pain when one form was filled out by personnel at the emergency

care center and that Fix's testimony of how and when the injury occurred was corroborated by the testimony, written statements, and/or report of a coworker and Fix's supervisor.

Because we conclude that the appeals officer's fact-based conclusions of law are supported by substantial evidence, the appeals officer did not clearly err or abuse her discretion in reversing the denial of Fix's claim and remanding the claim for an award of workers' compensation benefits. Menditto, 121 Nev. at 283, 112 P.3d at 1097. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
William F. Buchanan, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP
Greenman Goldberg Raby & Martinez
Eighth District Court Clerk

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[1]We conclude that LVPC's arguments regarding the last injurious exposure rule lack merit. LVPC was Fix's self-insured employer since 1997, it accepted liability for his 2000 industrial injury to his back, and there was no other employer with whom liability could be apportioned. Consequently, it did not matter if the December 2005 injury was a new injury, an aggravation, or a recurrence, because LVPC is the only employer who could have been held liable for a compensable industrial injury under these circumstances. See Las Vegas Hous. Auth. v. Root, 116 Nev. 864, 868-69, 8 P.3d 143, 146 (2000).