

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAROLD KASSEBAUM,
Appellant,
vs.
ALTERNATIVE SERVICE CONCEPTS
AND LYON COUNTY,
Respondents.

No. 54288

FILED

DEC 30 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING REHEARING, REINSTATING APPEAL,
AND AFFIRMING DISTRICT COURT ORDER

This is a proper person petition for rehearing of this court's September 14, 2010, order affirming the district court's denial of a petition for judicial review in a workers' compensation action. Third Judicial District Court, Lyon County; David A. Huff, Judge.

Rehearing petition

Having considered the petition for rehearing, answer, and other documents submitted by the parties, we have determined that rehearing of this matter is warranted because the administrative record, which included the medical evidence relied on by the appeals officer in making its ruling, was not included in the record on appeal transmitted to this court by the district court. Accordingly, we grant the petition for rehearing and reinstate this appeal. See NRAP 40(e).

The appeal

Proper person appellant Darold Kassebaum challenged the appeals officer's closure of his workers' compensation claim and denial of workers' compensation benefits for an industrial injury. In concluding that Kassebaum had not met his burden of proving that he had developed

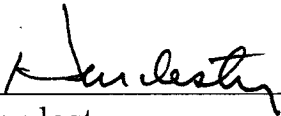
a late manifested or newly discovered condition arising out of the lumbar strain/sprain that he suffered in 2000, the appeals officer detailed the evidence that she considered and noted that all doctors had indicated that Kassebaum had preexisting degenerative spinal conditions. The appeals officer expressly gave greater weight to the medical reports that opined that Kassebaum's original lumbar strain had stabilized within two months of the industrial accident and that his subsequent problems were the result of the natural progression of his preexisting degenerative spinal conditions and were not due to his work injury.

Kassebaum petitioned for judicial review of the appeals officer's decision, and the district court deferred to the appeals officer's credibility determinations and found that substantial evidence supported the appeals officer's decision and that the decision was not arbitrary or capricious. The district court concluded that Kassebaum's claim was only compensable for a lumbar strain and that there was no "newly developed" medical condition causally related to Kassebaum's industrial injury. As a result, the district court denied Kassebaum's petition for judicial review, and this appeal followed.


Having reviewed the record on appeal, including those documents missing from the original record transmitted by the district court that were subsequently provided by respondents, we conclude that substantial evidence supports the appeals officer's conclusion that Kassebaum had not met his NRS 616C.150(1) burden of proving that he suffered a "newly developed" injury under NRS 616C.160. See United Exposition Service Co. v. SIIS, 109 Nev. 421, 424, 851 P.2d 423, 425 (1993) (stating that the employee bears "the burden of showing that the claimed disability or condition was in fact caused or triggered or contributed to by

the industrial injury and was not merely the result of the natural progression of a preexisting disease or condition”). As we will not substitute our judgment for that of the appeals officer regarding credibility or the weight of the evidence and because there is substantial evidence to show that the appeals officer’s decision was not clearly erroneous or arbitrary or capricious, we conclude that the district court properly denied Kassebaum’s petition for judicial review. Grover C. Dils Med. Ctr. v. Menditto, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005). Accordingly, we affirm the district court’s order.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David A. Huff, District Judge
Darold Kassebaum
Barbara A. Salerno
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Lyon County Clerk