

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Appellant,
vs.
JOHN GREISEN,
Respondent.

No. 54523

FILED

JAN 18 2011

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

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition for judicial review in a workers' compensation action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

In considering an appeal from the district court's order granting a petition for judicial review of an administrative 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 (2003). Although we independently review purely legal determinations, we defer to the administrative officer's fact-based conclusions of law that are supported by substantial evidence, and we will not substitute our judgment for that of the appeals officer concerning issues of credibility or the weight of evidence. Id. at 283-84, 112 P.3d at 1097. Substantial evidence is "that 'which a reasonable person might accept as adequate to support a conclusion.'" Id. at 283, 112 P.3d at 1097 (citation omitted).

To obtain workers' compensation benefits, the claimant bears the burden of proving, by a preponderance of the evidence, that his injury arose out of and in the course of his employment. NRS 616C.150(1). The mere fact that the claimant has an accident at work does not automatically mean that the injury arose out of employment and is

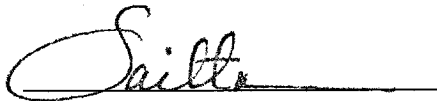
compensable; the claimant must show a causal connection between the injury and his work. Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604-05, 939 P.2d 1043, 1046 (1997). The claimant also bears “the burden of showing that the claimed disability or condition was in fact caused or triggered or contributed to by the industrial injury and was not merely the result of the natural progression of a preexisting disease or condition.” United Exposition Service Co. v. SIIS, 109 Nev. 421, 424, 851 P.2d 423, 425 (1993).

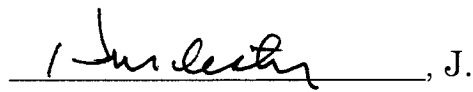
Thus, here, it was respondent’s burden to prove that the alleged accident occurred at and due to his work and that there was a causal connection between the accident and his right knee injury. Id.; NRS 616C.150(1); Rio Suite Hotel, 113 Nev. at 604, 939 P.2d at 1045. The appeals officer heard the testimony of respondent and three other witnesses, and reviewed the medical evidence, before specifically finding that respondent was not a credible witness and concluding that respondent “failed to present sufficient evidence to establish an accident and injuries arising out of and in the course of his employment.” Other than respondent’s subjective complaints and his testimony concerning the alleged accident, there is insufficient credible medical evidence to establish a work accident and injury arising out of that accident. And despite respondent’s contradictory statements, substantial evidence shows that respondent had a preexisting problem with his right knee, which he reportedly was able to “pop” back into place by himself. The MRI of respondent’s right knee, which was taken three months after the alleged accident, did not establish that the right knee meniscal tear occurred on the date of the accident and the MRI also suggested a separate old or chronic injury, with Dr. Luther Creed noting that the MRI showed a “[n]on-visualized anterior cruciate ligament, presumably torn, possibly


chronically” and Dr. Anthony Serfustini noting that respondent had a “probably old anterior cruciate ligament right knee.”

Under the totality of circumstances, therefore, the appeals officer did not abuse his discretion in weighing the evidence to conclude that respondent had not met his burden of proving that he had fallen off a ladder at work and sustained a work-related injury. NRS 616C.150(1); Rio Suite Hotel, 113 Nev. at 604, 939 P.2d at 1045. As the district court should have deferred to the administrative officer’s fact-based conclusions of law that are supported by substantial evidence and should not have substituted its judgment for that of the appeals officer concerning issues of credibility or the weight of the evidence, Grover C. Dils Med. Ctr., 121 Nev. at 283-84, 112 P.3d at 1097, we

ORDER the district court’s order granting respondent’s petition for judicial review REVERSED.¹


Saitta, J.


Hardesty


Parraguirre, J.

cc: Hon. Allan R. Earl, District Judge
Janet Trost, Settlement Judge
Floyd, Skeren & Kelly
Black & LoBello
Eighth District Court Clerk

¹We deny appellant’s request for attorney fees and to strike the answering brief, and we deny respondent’s request for sanctions.