IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY FOOD DISTRIBUTING,

Appellant,

vs.

JENNY MALCOMB,

Respondent.

No. 34950

FILED

DEC 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Valley Food Distributing's petition for judicial review in a workers' compensation matter. Valley Food argues that substantial evidence does not exist in the record to support the appeals officer's determination that respondent Jenny Malcomb proved, by a preponderance of the evidence, that her injuries arose out of and in the course of her employment with Valley Food. We disagree; and, accordingly, we affirm the order denying judicial review.

Malcomb worked as a sales representative for Valley Food for approximately ten years. In 1997, Malcomb complained of pain in her forearms, wrists and left elbow, and numbness and tingling in her hands. Malcomb filed a workers' compensation claim with Valley Food's third party administrator, claiming, as required by NRS 616C.150, that her injuries "arose out of and in the course of" her employment. Malcomb's claim was denied. When Malcomb appealed her claim, however, the appeals officer determined that Malcomb had satisfied her burden of proving, by a preponderance of the evidence, that her injuries arose out of and in the course of her employment. Therefore, the appeals officer concluded that Malcomb was entitled to workers' compensation benefits. The district court thereafter denied Valley Food's petition for judicial review. Valley Food now appeals.

Malcomb is only entitled to workers' compensation benefits if she demonstrated to the administrative officer, by a preponderance of the evidence, that her injuries arose out of and in the course of her

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employment.[1] In the workers' compensation context, we have determined that "arose out of" entails an inquiry into whether there is a causal connection between the injury and the employee's work.[2] A claimant must demonstrate that the origin of the injury is related to some risk involved within the scope of employment.[3] The factfinder examines the totality of the circumstances in resolving whether an injury arose out of employment.[4] In determining what constitutes a "preponderance of the evidence" in the workers' compensation context, we have stated that a claimant must demonstrate, with medical testimony, that it is "more probable than not" that the occupational environment was the cause of the injury.[5]

In this case, health care providers who examined Malcomb and reviewed her medical records disagreed regarding whether Malcomb's injuries were causally related to her work. Two doctors determined that her injuries were, in fact, caused by her workplace environment. A third doctor expressed no opinion, a fourth concluded that Malcomb's injuries were not related to her work and a fifth doctor stated that Malcomb's injuries "are related to her employment with at least 50 percent medical certainty."

We conclude that there was substantial evidence on the record to support the appeals officer's conclusion by a preponderance of the evidence that Malcomb's injuries arose out of and in the course of her employment.[6] Two doctors unequivocally found that Malcomb's injuries were caused by her workplace environment. The appeals officer found the

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[1]NRS 616C.150.

[2]Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997) (citations omitted).

[3]Id.

[4]Id.

[5]Seaman v. McKesson Corp., 109 Nev. 8, 10, 846 P.2d 280, 282 (1993).

[6]See United Exposition Services Co. v. SIIS, 109 Nev. 421, 424, 851 P.2d 423, 424-25 (1993) (stating that in determining whether substantial evidence exists in the record to support an administrative determination, "substantial evidence" is evidence that a reasonable mind might accept as adequate to support a conclusion).

testimony of these doctors credible.[7] And although one doctor determined that Malcomb's injuries were not related to her work, the findings of the last two doctors were equivocal regarding causation. Therefore, based on the two doctors who concluded that Malcomb's injuries were caused by her workplace environment, the appeals officer could conclude, as he did, that Malcomb had proved by a preponderance of the evidence that her injuries arose out of and in the course of her employment.

Accordingly, substantial evidence exists in the record to support the appeals officer's determination. Based on the foregoing, we AFFIRM the order of the district court denying judicial review.

It is so ORDERED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Mark W. Gibbons, District Judge
David H. Benavidez
Peter L. Busher, Nevada Attorney for Injured Workers
Clark County Clerk

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[7]See Roberts v. SIIS, 114 Nev. 364, 367, 956 P.2d 790, 792 (1998) (stating that "this court may not substitute its judgment for that of the appeals officer on matters of weight, credibility, or issues of fact"); SIIS v. Bokelman, 113 Nev. 1116, 1119, 946 P.2d 179, 181 (1997) (stating that "[o]n questions of fact, an administrative agency's decision is given deference; therefore, a reviewing court must confine its inquiry to determining whether the record provides substantial evidence supporting the administrative agency's decision").