

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ESCOTO,
Appellant,
vs.
NEVADA BEVERAGE,
Respondent.

No. 55072

FILED

APR 28 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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; Kathleen E. Delaney, Judge.

Appellant Michael Escoto filed a claim for workers' compensation benefits, asserting that he injured his back while lifting cases of beer one day during his employment with respondent Nevada Beverage. After the validity of Escoto's claim was disputed by Nevada Beverage, an administrative appeals officer ultimately entered a decision denying workers' compensation benefits. In his decision, the appeals officer found persuasive a report provided by Reynold L. Rimoldi, M.D., asserting that Escoto suffered from preexisting degenerative conditions, and that the workplace incident involving the beer cases, resulted in no new injury other than a soft tissue sprain. As a result, the appeals officer concluded that Nevada Beverage had demonstrated that the workplace incident was not "a substantial contributing cause" of Escoto's condition, as set forth in NRS 616C.175. Escoto petitioned the district court for judicial review, which was denied, and has now appealed.

On appeal, Escoto argues that the appeals officer abused his discretion in relying on Dr. Rimoldi's report to conclude that the workplace injury was not a substantial contributing cause of Escoto's resulting condition. More specifically, Escoto contends that Dr. Rimoldi's report is fatally flawed, and therefore cannot constitute substantial evidence to support claim denial, because it fails to address the fact that a magnetic resonance image (MRI) taken after his workplace accident showed a broad central disc hernia, while an MRI taken shortly before the accident noted no such hernia.¹ Nevada Beverage argues that the appeals officer's decision should be upheld because the appeals officer's determination that Dr. Rimoldi's report was persuasive medical evidence was a question of fact that should not be reweighed on appeal.

This court, like the district court, reviews an administrative decision to determine whether it was arbitrary or capricious and thus an abuse of discretion. Rio All Suite Hotel & Casino v. Phillips, 126 Nev. ___, ___, 240 P.3d 2, 4 (2010). An agency's factual findings will be upheld when they are supported by substantial evidence. Id. "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion." Desert Valley Constr. v. Hurley, 120 Nev. 499, 502, 96 P.3d 739, 741 (2004) (internal quotations omitted). This court cannot substitute its judgment for that of the agency for the proper weight to be

¹Because we conclude that this argument warrants reversal, we do not address Escoto's alternative argument that all the medical evidence in the record suggests that Escoto's back problems were caused by his long career with Nevada Beverage, and therefore, it cannot be concluded that any preexisting condition originated outside his employment.


given particular evidence regarding a question of fact. Bob Allyn Masonry v. Murphy, 124 Nev. 279, 282, 183 P.3d 126, 128 (2008).

Here, the record contains a pre-accident MRI dated May 27, 2008, which lists as final impressions “[d]egenerative spondylosis and disc disease of the lumbar spine,” as well as a post-accident MRI dated July 21, 2008, which lists as final impressions “[1] L3-4 disc disease with diffuse annular bulge and facet arthropathy with only mild stenosis, [2] L4-L5 disc disease with annular tear, broad central disc herniation, and facet arthropathy with minimal acquired stenosis, [and 3] [m]ild L5-S1 disc disease is present with bilateral facet arthropathy resulting in bilateral foraminal encroachment.” Dr. Rimoldi’s report notes that it was based on his review of various medical records, including a comparison of these two MRIs. Dr. Rimoldi stated that his study of the two MRIs led him to conclude that there was no objective evidence that Escoto suffered any new or progressive injury as a result of the workplace incident, but that his back issues are completely attributable to preexisting degenerative conditions. Instead, Dr. Rimoldi diagnosed a lumbar strain that should be resolved within six to twelve weeks after the accident.

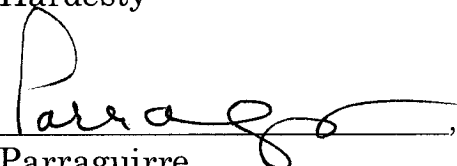
While this court will not reweigh evidence and will uphold factual findings supported by substantial evidence, see Bob Allyn Masonry, 124 Nev. at 282, 183 P.3d at 128; Phillips, 126 Nev. at ___, 240 P.3d at 4, Dr. Rimoldi’s report fails to provide any explanation as to why the presence of the post-accident broad central disc herniation is medically insignificant. Further, the appeals officer’s decision fails to provide any acknowledgement or discussion of this gap in the medical evidence. Due to the appeals officer’s failure to acknowledge or address the apparent omission from Dr. Rimoldi’s report, we are unable to review whether the

decision is supported by substantial evidence, see Hurley, 120 Nev. at 502, 96 P.3d at 741 (defining substantial evidence as “that which a reasonable mind might accept as adequate to support a conclusion”) (internal quotations omitted), and therefore, we conclude that the appeals officer abused his discretion in essentially adopting the report wholesale without providing a more careful written analysis of the evidence. Phillips, 126 Nev. at ___, 240 P.3d at 4. Accordingly, we reverse the district court order denying the petition for judicial review and instruct that this matter be remanded to the administrative appeals officer so that the appeals officer may set forth further findings and conclusions addressing the perceived shortcomings in Dr. Rimoldi’s report set forth above.

It is so ORDERED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Kathleen E. Delaney, District Judge
William F. Buchanan, Settlement Judge
Benson, Bertoldo, Baker & Carter, Chtd.
Law Offices of David Benavidez
Eighth District Court Clerk