

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUELINE PHILLIPS,  
Appellant,  
vs.  
CITY OF NORTH LAS VEGAS AND  
MEADOWBROOK INSURANCE  
SERVICES,  
Respondents.

No. 55321

**FILED**

JUL 14 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Ingersoll*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellant Jacqueline Phillips worked as a correctional officer for respondent City of North Las Vegas. Phillips sustained an injury in 2005 after repeatedly lifting heavy boxes at work. She filed a claim for worker's compensation, which was denied, and Phillips did not appeal. In 2007, Phillips sustained another injury on the job, which she initially thought was an aggravation of her 2005 injury. Phillips again filed a workers' compensation claim with the City, which was denied by the City's third-party administrator, respondent Meadowbrook Insurance Services. Phillips appealed the denial of her claim.

A hearing officer reversed the denial; however, an appeals officer then reversed the hearing officer's decision after finding that Phillips' testimony was inconsistent and that Phillips did not meet her burden of proof by showing that her injury arose out of and in the course of her employment. Phillips then filed a petition for judicial review in the

district court, which the district court denied. Phillips now appeals arguing that (1) the appeals officer's decision to disregard Phillips' testimony as inconsistent was not supported by substantial evidence, and (2) the appeals officer's finding that Phillips did not meet her burden of proof by showing that her injury arose out of and in the course of her employment was belied by the substantial evidence contained in her medical records.

When reviewing a district court's denial of a petition for judicial review of an agency decision, this court engages in the same analysis as the district court: "we evaluate the agency's decision for clear error or an arbitrary and capricious abuse of discretion." City of Las Vegas v. Lawson, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 1175, 1178 (2010) (quoting Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383 (2008)). This court defers to an agency's findings of fact that are supported by substantial evidence and will "not reweigh the evidence or revisit an appeals officer's credibility determination." Milko, 124 Nev. at 362, 184 P.3d at 383-84. Substantial evidence is such that a reasonable person would find it adequate to support the appeals officer's conclusion. Lawson, 126 Nev. at \_\_\_, 245 P.3d at 1178. Questions of law are reviewed de novo. Id.

The appeals officer's decision regarding Phillips' testimony was supported by substantial evidence

Phillips claimed that she injured her right shoulder dragging an inert inmate from a squad car to a holding cell in September 2007. Phillips first sought treatment from her own doctor, Dr. Keralapura Subramanyam, in October 2007, and she told Dr. Subramanyam that she believed her current injury was an aggravation of an injury she sustained in 2005 after lifting heavy boxes at work for three days straight. On the

employee claim form she filled out that day, she attributed her symptoms to the 2005 injury and claimed that they had begun to worsen in July 2007. She contends that after filling out this form, Dr. Subramanyam informed her that her injury was recent and not a result of her 2005 injury. Phillips then contacted the City and it instructed Phillips to see a workers' compensation doctor, Dr. Charles Stein. Phillips told Dr. Stein that her symptoms began on September 30, 2007. At that time, she filled out a second employee claim form and reported that her symptoms began October 1, 2007. The City denied Phillips' claim, after which she treated with a third doctor, Dr. Steven Thomas, to whom she reported that her symptoms began on September 22, 2007.

During the hearing before the appeals officer, Phillips testified that her symptoms began on or after September 22, 2007. Phillips argues that the appeals officer erroneously relied solely on the information she provided on two employee claim forms to reach the conclusion that her testimony was inconsistent and therefore not credible. Phillips argues that this reliance was incorrect because she explained any inconsistencies during her testimony—she originally thought the injury was an aggravation of her 2005 injury until Dr. Subramanyam explained to her that it was of recent origin.

However, based on the appeals officer's decision and order, it appears that the appeals officer relied on much more than the inconsistent information contained in the two employee claim forms. The appeals officer also found that Phillips' testimony was inconsistent and lacked credibility because Phillips failed to report her injury to her employer on September 22, 2007; she did not complain of pain in her shoulder until a week after the incident that occurred on September 22, 2007; and she told

one doctor her symptoms did not begin until September 30, 2007, but thereafter told another doctor that they began on September 22, 2007. Therefore, we conclude that substantial evidence supports the appeals officer's credibility decision regarding Phillips' testimony.

Substantial evidence supports the appeals officer's decision that Phillips failed meet her burden of proof

NRS 616C.150(1) provides that “[a]n injured employee . . . [is] not entitled to receive compensation . . . unless the employee . . . establish[es] by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment.” Phillips argues that the appeals officer erroneously found that she failed to show her injury arose out of and in the course of her employment. She asserts that, based on her own testimony that she experienced pain in her shoulder on or after September 22, 2007, that the first doctor she saw told her that her injury was recent and not a result of her 2005 injury, and the medical reports from three different doctors, substantial evidence proved that her injury was causally connected to her employment.

“An award of compensation cannot be based solely upon possibilities and speculat[ion] . . . . [A] . . . physician must state to a degree of reasonable medical probability that the condition in question was caused by the industrial injury, or sufficient facts must be shown so that the trier of fact can make the reasonable conclusion that the condition was caused by the industrial injury.” Horne v. SIIS, 113 Nev. 532, 537-38, 936 P.2d 839, 842 (1997) (quoting United Exposition Service Co. v. SIIS, 109 Nev. 421, 424-425, 851 P.2d 423, 425 (1993)).

Here, the record reflects that none of Phillips' treating physicians stated to a reasonable degree of medical probability that Phillips' injury was related to the September 22, 2007, incident.

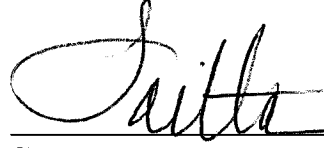
Phillips first sought treatment from Dr. Subramanyam. Dr. Subramanyam's report reflects that Phillips' injury is "possibly" recent. She diagnosed Phillips with an acute sprain/strain of the right shoulder, trapezius and cervical spine. Where asked if Phillips' diagnosis was "[r]elated to the [i]ndustrial [i]njury," Dr Subramanyam wrote "yes, lifting heavy boxes," which was an apparent reference to Phillips' notation on the first employee claim form she filled out that her injury happened in 2005 when she was lifting heavy boxes at work, and that her symptoms had worsened in July 2007.

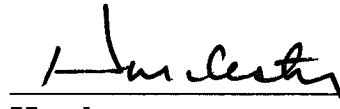
Thereafter, Phillips saw Dr. Stein, and she was required to fill out a second employee claim form. On that form Phillips noted that she began feeling pain in her neck on October 1, 2007. Dr. Stein diagnosed Phillips with rotator cuff tendonitis and cervicothoracic myositis. Where asked if Phillips' diagnosis was "[r]elated to the [i]ndustrial [i]njury," Dr. Stein wrote "pulled an inmate ... [with] R[ight] arm on 9/22/07 ... no symptoms until 9/30/07?" The appeals officer determined that Dr. Stein appeared to be questioning how Phillips could have sustained an injury on September 22 and yet experienced no symptoms until September 30.

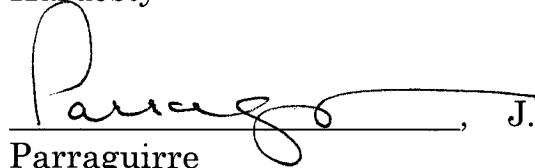
Finally, after her claim was denied, Phillips saw Dr. Thomas. Dr. Thomas mentioned both the 2005 injury and Phillips' description of feeling pain while pulling an inmate on September 22, 2007, but he made no conclusions regarding causation in his diagnosis.

Thus, we conclude that the appeals officer's decision that Phillips failed to meet her burden of proof by showing a causal connection between the September 22, 2007, incident and her injuries was not clearly erroneous or an arbitrary or capricious abuse of discretion and was supported by substantial evidence.

For the reasons stated above, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Abbi Silver, District Judge  
Janet Trost, Settlement Judge  
Stovall & Associates  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk