

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER C. KOCH,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA; AND DIVISION OF
INDUSTRIAL RELATIONS,
Respondents.

No. 57539

FILED

SEP 15 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in a workers' compensation action. First Judicial District Court, Carson City; James E. Wilson, Judge.

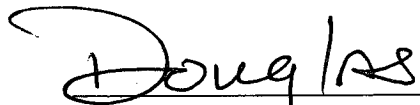
An administrative appeals officer denied appellant Peter C. Koch's request for permanent total disability benefits under the "odd-lot" doctrine, determining that the evidence established that Koch was capable of working as a jeweler and that the reason for Koch's unemployment was his lack of motivation to find a job. Koch petitioned the district court for judicial review, which the court denied after concluding that Koch had failed to cite to authority or portions of the record supporting his position. The district court also alternatively determined that, reaching the merits of the petition, the appeals officer's decision was supported by substantial evidence in the record, and therefore should be affirmed. Koch has now appealed to this court.

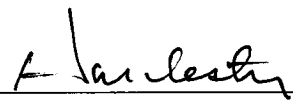
On appeal, Koch asks this court to review the denial of his request for permanent partial disability benefits. Koch also asks this court to review medical evidence not presented during the administrative process.

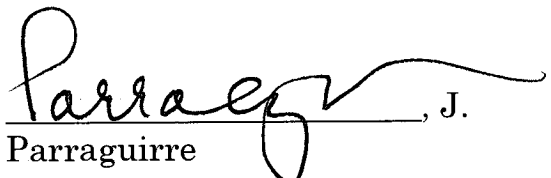
In reviewing an administrative decision, this court may not substitute its judgment for that of the administrative tribunal on the weight of the evidence on any question of fact. NRS 233B.135(3). Nonetheless, an administrative decision may be set aside if it is “affected by error of law [or] clear error in view of the reliable, probative, and substantial evidence of record,” Dredge v. State ex rel. Dep’t Prisons, 105 Nev. 39, 43, 769 P.2d 56, 58-59 (1989), or the decision is arbitrary or capricious or constitutes an abuse of discretion. NRS 233B.135(3)(f). “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).

Having reviewed appellant’s proper person appeal statement and the record on appeal, we conclude that the appeals officer’s decision was supported by substantial evidence in the record and was not otherwise arbitrary or capricious. NRS 233B.135(3)(f); State, Emp. Security, 102 Nev. at 608, 729 P.2d at 498. We are also not persuaded that a remand to the appeals officer for reconsideration with the new medical evidence is warranted here. See Garcia v. Scolari’s Food & Drug, 125 Nev. 48, 52-53, 200 P.3d 514, 517-18 (2009) (setting forth the analysis for reviewing requests for administrative remands under NRS 233B.131(2)). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. James E. Wilson, District Judge
Peter C. Koch
Robert A. Kirkman
Sertic Law, Ltd.
Carson City Clerk