

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JOHNSON,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 57947

FILED

OCT 04 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Anger*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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; Ronald J. Israel, Judge.

Appellant Richard Johnson suffered injuries to his right knee due to an industrial accident in 1980. His claim was accepted for benefits by respondent Employers Insurance Company of Nevada's (EICON) predecessor. Over the years, EICON has authorized numerous surgeries to Johnson's right knee, including a right knee replacement surgery in 2007. Subsequently, Johnson's claim with EICON was closed, with the exception of annual visits to his knee doctor, Dr. Parry.

On December 4, 2007, Dr. Parry intended to perform bilateral knee replacement surgery on Johnson. In anticipation of this, Dr. Parry sent two facsimiles to EICON in November 2007, requesting both authorization and claim reopening for the proposed surgery on the right

knee. Authorization for the right knee surgery and notice of claim reopening retroactive to November 30, 2007, were not received by Johnson until December 19, 2007.

On November 30, 2007, “[a]s part of the preoperative evaluation and workup to make sure that [Johnson] would come through the surgery okay,” Dr. Parry recommended that Johnson undergo a heart stress test which required Johnson to walk and run on a treadmill. During this stress test, Johnson sustained an injury to his right foot.¹ Dr. Parry proceeded with the non-industrial left knee surgery on December 4, 2007, and the industrial right knee surgery was performed on January 22, 2008. On April 14, 2008, EICON closed Johnson’s industrial insurance claim related to his right knee.

Between November 2007 and late 2008, Johnson asserted that he did not report his foot injury because he believed in pursuing treatment through conservative methods. Since he was self-employed as a physical therapist and owned a private practice, he already had equipment that he was able to use to maintain his mobility. On April 23, 2008, Dr. Parry reported in Johnson’s medical chart that Johnson, prior to his bilateral knee replacement surgeries, injured his right foot while walking on a treadmill to lose weight and improve his range of motion.

¹Over time, that injury evolved into a condition known as Charcot foot. Johnson’s podiatrist, Dr. Carl Van Gils, DPM, described Charcot foot as “a highly destructive and deforming change in [the] bone and joint structure” of the foot. Dr. Van Gils opined that this condition resulted from a combination of the trauma sustained during the stress test and Johnson’s preexisting peripheral neuropathy. Dr. Van Gils further noted that, without surgery, Johnson’s condition placed him at a high risk for lower extremity amputation or Charcot foot arthropathy.

Thereafter, Dr. Parry explained that reconstructive surgery would likely be required to correct the condition in his right foot and that the foot injury was related to the original right knee injury. Johnson did not notify EICON of the foot injury until February 2009, well beyond the time for reporting a new injury provided in NRS 616C.015.

In July 2009, Johnson requested that EICON reopen his industrial right knee claim to include coverage for treatment of his right foot injury. However, in September 2009, EICON denied Johnson's request to reopen his claim stating that there was no medical evidence submitted to establish a change in circumstance related to the original injury, and a relationship between the foot injury and the original industrial injury was not established prior to claim closure.

Johnson appealed EICON's denial to the Department of Administration, Hearings Division. The hearing officer reversed EICON's denial of the claim. The appeals officer found that the medical evidence and opinions presented by Dr. Parry and Dr. Van Gils, and Johnson's testimony established a connection between Johnson's injured right foot and the original injury to his right knee. The appeals officer determined that the heart stress test was necessary for Johnson's right knee surgery and the test caused the injury to his right foot. Because the appeals officer found that the heart stress test occurred in the process of providing treatment for the original right knee injury, he concluded that the right foot injury was a compensable condition in Johnson's claim pursuant to NRS 616C.390 and NRS 616C.160.

Additionally, the appeals officer noted that EICON's argument, that Johnson's foot injury was complicated by his non-industrial progressive peripheral neuropathy and it was possibly denied the ability to provide for proper treatment due to Johnson's failure to report the injury for 18 months, goes to the resulting condition after the injury occurred; therefore, it has no bearing on whether the foot injury should be included as part of Johnson's industrial claim. The appeals officer also excused Johnson's late notice of his newly developed foot injury because the circumstances of the situation were so unique that Johnson could not have been expected to know whether the time requirements under NRS 616C.015 for reporting a new injury to an employer applied to his situation.

EICON filed a petition for judicial review and the district court reversed the appeals officer's decision and order. The district court found that there was insufficient evidence to support the appeals officer's conclusion that Johnson's right foot injury was a compensable consequence of his right knee injury, and therefore, it held that Johnson's request to have his claim reopened for treatment was properly denied. Johnson now appeals from the district court's order.

Discussion

Like the district court, we review an appeals officer's decision for clear error or abuse of discretion. Dickinson v. American Medical Response, 124 Nev. 460, 465, 186 P.3d 878, 882 (2008). An appeals officer's legal conclusions are subject to de novo review, but fact-based legal conclusions will not be disturbed if they are supported by substantial evidence. Id. at 466, 186 P.3d at 882. "Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." Id.

Johnson asserts that EICON should reopen his industrial claim for treatment of his foot injury based on NRS 616C.160. NRS 616C.160 provides that a newly developed injury that is not referenced within the employee's medical records for the reported industrial injury must not be considered as part of the employee's original workers' compensation claim, unless the treating physician or chiropractor establishes by medical evidence a causal relationship between the new injury and the original industrial accident. A new injury has a causal relationship with the original industrial accident if it was sustained in the course of receiving reasonable medical treatment for the original industrial injury and that when a person is injured during reasonable medical treatment for an industrial injury, the industrial insurance system will pay for that injury. Imperial Palace v. Dawson, 102 Nev. 88, 90-91, 715 P.2d 1318, 1320 (1986).

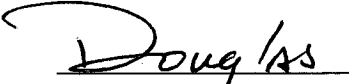
In this case, the record indicates that Dr. Parry ordered the stress test in order to ensure that Johnson was physically fit to undergo the operation on both knees on December 4, 2007, and that the stress test was necessary in preparation for the right knee surgery. Both of Johnson's treating doctors opined to a reasonable degree of medical certainty that Johnson's foot injury was caused by the incident during the treadmill test. Johnson also testified that he injured his foot during the stress test for the bilateral knee surgery, which the appeals officer found to be credible and supported by medical evidence.


In opposition, EICON argues that Johnson's right foot injury was not caused by his industrial injury because his claim was not open, and neither the test nor the industrial knee surgery was authorized when the injury occurred. It also claims that the stress test was only a prerequisite to the non-industrial knee surgery since he did not have authorization to have the industrial knee surgery. It further claims that it is unclear what injury, if any, Johnson suffered during the stress test because there was no medical reporting at the time of the injury and its treatment. It explains that there is evidence that Johnson's condition was a result of his severe neuropathy instead. EICON insists that a "mere possibility that the treadmill incident contributed to the current foot condition is not sufficient to establish the causal connection between the condition and appellant's industrial injury."


EICON's contentions are without merit. Whether a newly developed injury is part of the original industrial injury claim is not predicated on whether the claim is open or whether the treatment was authorized. Instead, NRS 616C.160 requires only that the new injury have a causal relationship with the industrial claim. Here, there was substantial evidence to support the appeals officer's conclusion that Dr. Parry had ordered the test for the purposes of treating both the industrial knee and the non-industrial knee. Therefore, under Dawson, Johnson's foot injury was causally related to the industrial claim and is a compensable consequence of the industrial knee injury.

Based on the record, we conclude that there was substantial evidence to support the appeals officer's findings of fact: Johnson sustained a right foot injury in the course of treating his industrial knee injury, therefore, EICON should have reopened Johnson's industrial injury claim for treatment of Johnson's right foot injury² Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Ronald J. Israel, District Judge
Janet Trost, Settlement Judge
Nevada Attorney for Injured Workers/Las Vegas
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

²We note that although the district court elaborated on the factual and procedural history of Johnson's claim, its summary conclusion that Johnson failed to establish his claim is insufficient to demonstrate that the agency's conclusion was clear error or was an abuse of discretion. The district court's order also failed to establish the reason why it concluded there was insufficient evidence in light of the administrative record.