

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE SPEARS,
Appellant,

vs.

POWELL CABINET & FIXTURE CO.,
AND EMPLOYERS INSURANCE
COMPANY OF NEVADA,
Respondents.

No. 35311

FILED

MAY 09 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review.

“This court’s role in reviewing an administrative decision is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency’s decision was arbitrary or capricious and was thus an abuse of the agency’s discretion.”¹ Additionally, the decision of an administrative agency will be affirmed if there is substantial evidence to support the decision.² Substantial evidence is “that which ‘a reasonable mind might accept as adequate to support a conclusion.’”³

¹United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) (citation omitted); see also NRS 233B.135.

²State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 607-08, 729 P.2d 497, 498 (1986).

³Id. at 608, 729 P.2d at 498 (quoting Richardson v. Perales, 402 U.S. 389 (1971)).

Appellant Eugene Spears contends that the district court erred by denying his petition for judicial review because the evidence adduced at the administrative hearing showed that his exposure to chemicals and dust while employed by Respondent Powell Cabinet & Fixture Company was the primary cause of his asthma condition. Alternatively, Spears contends that Powell Cabinet is liable for his medical condition based on the last injurious exposure rule because his carpentry work for Powell Cabinet aggravated and accelerated a pre-existing condition.

A claimant is not entitled to receive compensation unless he establishes by a preponderance of the evidence that his occupational disease arose out of and in the course of his employment.⁴ NRS 617.440 sets forth the requirements for an occupational disease to be deemed to have arisen out of and in the course of employment, including a direct causal connection between the work conditions and the occupational disease, and that the occupational disease can be fairly traced to the employment as the proximate cause.⁵

The record in this case reveals conflicting evidence concerning whether Spears' asthma was caused or aggravated by employment-related dust exposure.⁶ Spears insists that he did not suffer from childhood

⁴NRS 617.358(1).

⁵NRS 617.440(1).

⁶See NRS 617.366 (addressing employment-related aggravation of a pre-existing condition which is not employment related); see also Collett Electric v. Dubovik, 112 Nev. 193, 198, 911 P.2d 1192, 1195-96 (1996) (last injurious exposure rule in occupational disease cases places liability upon
continued on next page . . .

asthma and that he first experienced symptoms after working as a carpenter for ten years. However, his childhood medical records contradict this claim, and at least one physician stated that whether Spears had childhood asthma would affect the likelihood of a recurrence as an adult. Additionally, the record reveals that, while several physicians concluded that Spears' asthma was work-related, at least one physician's opinion was based on Spears' denial of childhood asthma or any family history of asthma. The other physicians were unable to determine the cause of Spears' asthma, and one opined that it was not caused or aggravated by employment-related dust exposure.


Appeals Officer Richins' decision was based on her credibility determinations and her assessment of the weight of the conflicting evidence which are not subject to appellate review.⁷ Accordingly, we conclude that substantial evidence supports Appeals Officer Richins' determination that Spears failed to prove by a preponderance of the evidence that his asthma arose out of and in the course of his employment with Powell Cabinet or that employment-related dust exposure aggravated his asthma. Accordingly, we

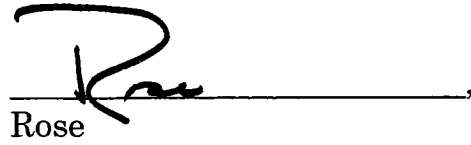
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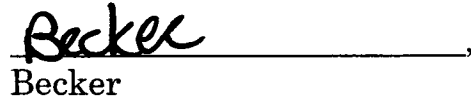
the carrier covering the risk at the time of the most recent injury that bears a causal relation to the disability).

⁷See NRS 233B.135 (standard of judicial review of an agency decision).

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Valorie Vega, District Judge
Althea Gilkey
Beckett & Yott, Ltd./Carson City
Smith & Kotchka
Clark County Clerk