IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DRYE,
Appellant,
vs.
NEVADA DEPARTMENT OF ADMINISTRATION; TRAVELERS INSURANCE; AND RED ROCK CHEM DRY,
Respondents.

No. 58989

FILED

JAN 18 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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 matter. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellant filed a claim for workers' compensation benefits based on an industrial injury that he sustained while at work in January 2007. In April 2009, the appeals officer limited the scope of appellant's claim to a right knee strain and post-traumatic coccydynia, directed a permanent partial disability (PPD) evaluation, and allowed appellant to request a functional capacity evaluation. Neither party sought judicial review of this decision. Subsequently, respondent Travelers Insurance made three determinations regarding appellant's workers' compensation claim that are the basis of the instant appeal. First, Travelers determined that appellant was stable and ratable and would receive a PPD determination based on a doctor's opinion. Second, Travelers determined that appellant was stable and had no ratable impairment caused by an

industrial injury, and thus closed appellant's claim. Third, Travelers terminated appellant's vocational rehabilitation benefits after determining that appellant had no work restrictions caused by an industrial injury. Appellant administratively challenged each of these decisions. The hearing officer subsequently affirmed the decision that appellant would receive a PPD determination, and the parties agreed to bypass the hearing officer for the other two decisions and have the appeals officer consider all three appeals together. In July 2010, the appeals officer affirmed all three decisions made by Travelers. Appellant filed a petition for judicial review, which the district court denied. This appeal followed.

This court reviews an appeals officer's decision in a workers' compensation matter for clear error or abuse of discretion. Vredenburg v. Sedgwick CMS, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008). On issues of fact, the appeals officer's decision will not be disturbed if it is supported by substantial evidence, which is "evidence that a reasonable person could accept as adequately supporting a conclusion." Id. at 557 & n.4, 188 P.3d at 1087 & n.4. An appeals officer's determinations on pure issues of law are reviewed de novo. Roberts v. SIIS, 114 Nev. 364, 367, 956 P.2d 790, 792 (1998). When conclusions of law are closely related to the agency's view of the facts, however, they are entitled to deference and will also not be disturbed if supported by substantial evidence. Campbell v. State, Dep't of Taxation, 109 Nev. 512, 516, 853 P.2d 717, 719 (1993).

On appeal, appellant argues that the appeals officer improperly found that the evidence supported a denial of PPD benefits, claim closure, and the termination of vocational rehabilitation benefits. The appeals officer's July 2010 decision and order found that (1) appellant

had failed to establish that he had a ratable impairment due to an industrial injury, and thus, he was not entitled to PPD benefits; (2) appellant failed to establish that he needed further treatment on an industrial basis or that his claim was closed improperly because his condition was stable and he had no permanent impairment; and (3) appellant had not established that he had permanent work restrictions that entitled him to vocational rehabilitation benefits.

Having reviewed appellant's proper person appeal statement and the record on appeal, we conclude that substantial evidence supports the appeals officer's decision. An injured employee is entitled to benefits for any permanent partial disability that results from an industrial injury. NRS 616C.490(1). Any benefits, however, are calculated in accordance with a disability rating determined by a physician. See NRS 616C.090; NRS 616C.100. In addition, an insurer may close a claim when no further care for the industrial injury is warranted. See NRS 616C.235 (allowing the closure of a claim). Here, the record included doctors' reports that determined that appellant had no ratable impairment for either his right knee or coccyx injury, that appellant was stable and at maximum medical improvement for his right knee strain, and that appellant required no further treatment for post-traumatic coccydynia.[1] The physicians' reports

[1]Appellant asserts that the district court erred by not considering new medical reports. The reports, however, were not reviewed by the administrator, not included in the administrative record, and not ordered as part of the administrative record by the district court. Therefore, this court will not consider such evidence. See NRS 233B.135(1)(b) (limiting this court's review to the administrative record).

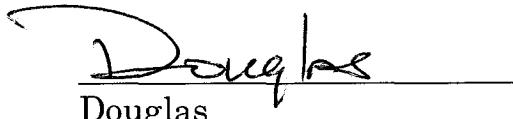
constitute substantial evidence that supports both the denial of PPD benefits and the closure of appellant's claim, and we therefore do not disturb the appeals officer's determination regarding these matters. See Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 369, 184 P.3d 378, 388 (2008) (noting that when there is varying evidence and "the record demonstrates that the appeals officer made a reasoned decision after considering all of the evidence," we will not disturb the appeals officer's reliance on certain medical reports over others); see also Langman v. Nevada Administrators, Inc., 114 Nev. 203, 209-10, 955 P.2d 188, 192 (1998) (providing that this court will not substitute its judgment regarding the weight or credibility given to evidence and testimony).

Appellant also argues that the appeals officer abused its discretion by affirming the termination of his vocational rehabilitation benefits. A physician's report concluded that any work restrictions that appellant may have were not caused by the industrial injury at issue. This report constitutes substantial evidence to support the appeals officer's finding that appellant had no permanent work restrictions caused by an industrial injury that would entitle him to vocational rehabilitation benefits, and we therefore do not disturb the appeals officer's decision to affirm the termination of these benefits. See NRS 616C.590(1) (allowing for vocational rehabilitation benefits only when the injured employee is approved to return to work with permanent restrictions that prevent the employee from returning to the position that he or she held at the time of injury); see also Vredenburg, 124 Nev. at 557, 188 P.3d at 1087-88 (noting that this court will not disturb the appeals officer's decision on an issue of

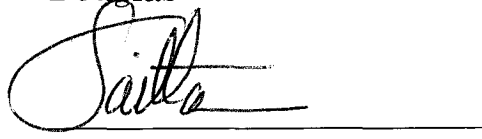
fact when it is supported by substantial evidence). Accordingly, we affirm the district court's denial of appellant's petition for judicial review.

It is so ORDERED.[2]

_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Saitta

cc: Hon. Ronald J. Israel, District Judge
Robert Drye
Nancy Karen Richins
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

---

[2]Appellant's arguments regarding the scope of his claim and retroactive temporary total disability benefits do not appear to be properly before this court in the instant matter, as appellant sought judicial review of the appeals officer's July 2010 decision and order, which did not address these two issues. To the extent that appellant's remaining arguments have not been addressed, we conclude that the arguments lack merit.