

IN THE SUPREME COURT OF THE STATE OF NEVADA

CANNON COCHRAN MANAGEMENT  
SERVICES, INC., (CCMSI),  
Appellant,  
vs.  
TOMMY ROBINSON,  
Respondent.

No. 59318

**FILED**

NOV 14 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Malone  
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; Douglas Smith, Judge.

*FACTUAL AND PROCEDURAL BACKGROUND*

Respondent Tommy Robinson was employed by the Las Vegas Valley Water District when he suffered an injury to his lower back. Subsequently, appellant Cannon Cochran Management Services, Inc., the insurer, accepted respondent's workers' compensation claim. This appeal arises from a dispute over respondent's permanent partial disability (PPD) award and whether apportionment of the award is appropriate based on respondent's prior back injuries. The first rating physician, Dr. Ezeanolue, rated respondent with a five percent whole-person impairment, which he then apportioned based on respondent's prior back injuries to a two-and-a-half percent PPD award, even though he did not have respondent's prior medical records to review at the time. The insurer held this award in abeyance while it sought review by another physician, and respondent appealed from the decision to hold that determination in abeyance. The second physician who issued a PPD report, Dr. Fraser, was not an official rating physician. He evaluated respondent based on the

current records alone, without performing an examination, and concluded that respondent should receive a zero percent whole person impairment and no PPD award. The insurer then offered respondent a zero-percent PPD award, from which respondent also appealed.

On administrative appeal, the hearing officer determined that a medical question existed regarding the rating and apportionment, and remanded the matter for respondent to receive a second PPD rating evaluation. The second rating physician, Dr. Siegler, rated respondent with a ten percent whole person impairment with no apportionment, but noted that he had not reviewed any medical records regarding respondent's prior back injuries. Appellant then held this award in abeyance pending the doctor's review of respondent's prior medical records, and respondent once again appealed. While this appeal was pending, Dr. Siegler reviewed respondent's prior medical records and reaffirmed that respondent's ten-percent whole-person impairment should not be apportioned for his prior back injuries. The hearing officer then reversed the insurer's decision to hold this award in abeyance and ordered the insurer to pay the unapportioned ten-percent PPD award. Appellant administratively appealed and the appeals officer agreed with the hearing officer that the evidence supported Dr. Siegler's evaluation and that the ten percent PPD award should issue to respondent without apportionment. Appellant then filed a petition for judicial review, which the district court denied. This appeal followed.

#### *DISCUSSION*

On appeal, appellant argues that the appeals officer inappropriately and unreasonably relied on Dr. Siegler's unapportioned ten-percent PPD rating and that the appeals officer should have ordered

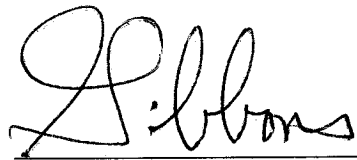
that respondent's prior medical records also be sent to Dr. Ezeanolue and Dr. Fraser for their review and opinion. In response, respondent argues that substantial evidence in the record supports the appeals officer's determination that Dr. Siegler's report was the most credible, and thus, the unapportioned ten-percent PPD award was proper.

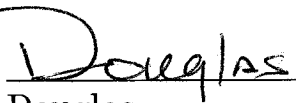
Having reviewed the parties' briefs and appendices, we conclude that substantial evidence supports the appeals officer's determination that respondent should receive the unapportioned ten-percent PPD award pursuant to Dr. Siegler's rating evaluation. *See Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008) (setting forth the applicable standard of review). Judicial review is confined to the record before the appeals officer, and we will not disturb the appeals officer's factual findings on judicial review if they are supported by substantial evidence. *See id.* "Substantial evidence 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 (internal quotation omitted).

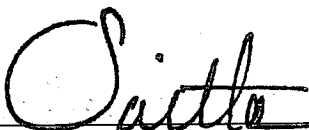
While appellant asserts that, rather than simply relying on Dr. Siegler's medical opinion, the appeals officer should have provided respondent's medical records regarding any prior back injuries to Dr. Ezeanolue and Dr. Fraser for their review and opinion before making a decision on the underlying matter, that argument lacks merit. As an initial matter, the record indicates that Dr. Fraser was not a properly selected rating physician. *See* NRS 616C.490(2) (requiring the rating physician to be selected in rotation from the list of qualified rating physicians maintained by the state, unless the parties agree otherwise). Further, while Dr. Ezeanolue, like Dr. Siegler, appears to be an official

rating physician based on the documents before us, appellant points to no authority indicating that more than one rating evaluation is required when the rating physician is properly appointed and the appeals officer finds that physician's evaluation credible. Here, the record reflects that Dr. Siegler was properly appointed as a rating physician and the appeals officer determined that Dr. Siegler's rating evaluation was credible and supported by the evidence. And it is well established that this court will not substitute its judgment regarding the weight or credibility given to evidence for that of the appeals officer. *See Langman v. Nev. Adm'rs, Inc.*, 114 Nev. 203, 209-10, 955 P.2d 188, 192 (1998). Thus, we conclude that the appeals officer's decision was not arbitrary or capricious, or an abuse of discretion, and that substantial evidence supports the appeals officer's finding that respondent was entitled to the unapportioned ten-percent PPD award based on Dr. Siegler's evaluation. *See Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087-88. Accordingly, we affirm the district court's order denying appellant's petition for judicial review.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

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

cc: Hon. Douglas Smith, District Judge  
Black & LoBello  
George T. Bochanis, Ltd.  
Eighth District Court Clerk