IN THE SUPREME COURT OF THE STATE OF NEVADA

LADONNA HARRY-TUCKER,
Appellant,
vs.
BALLY'S; CCMSI; AND THE STATE OF NEVADA DEPARTMENT OF ADMINISTRATION, APPEALS DIVISION, AN AGENCY OF THE STATE OF NEVADA,
Respondents.

No. 59704

FILED

DEC 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
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; Ronald J. Israel, Judge.

Appellant was employed by respondent Bally's Hotel when she was diagnosed with carpal tunnel syndrome, for which respondent CCSMI (the insurer) accepted a workers' compensation claim. After receiving carpal tunnel and finger trigger release surgeries from Dr. Andrew Bronstein, appellant returned to full-duty work and the insurer closed her claim. Less than a year later, appellant returned to Dr. Bronstein regarding pain in her hands, but his staff failed to identify her prior file, and thus, treated her as a nonworkers' compensation patient. With appellant's consent, Dr. Bronstein performed carpal tunnel revision surgery and finger trigger release surgery on appellant's right middle finger. Two months after surgery, appellant requested a completed C-4 injury form for this treatment, and Dr. Bronstein then noted appellant's previous workers' compensation claim, opining that her "current symptomatology is likely related to her previous condition."

Appellant subsequently sought to reopen her prior claim based on Dr. Bronstein's report, but the insurer denied that request. The hearing officer then reversed this decision and ordered the claim reopened. The appeals officer, however, reversed the hearing officer's decision and upheld the denial of reopening, finding that Dr. Bronstein's report did not establish "that the 2009 surgery was primarily due to the 2006 occupational disease," that no evidence established that appellant's condition was worse at the time that she sought reopening than at claim closure, and that no evidence supported the finding that her 2009 condition constituted a new claim. Appellant then sought judicial review, which the district court denied, and this appeal followed.

On appeal, appellant argues that the evidence shows an "unequivocal objective worsening" of her condition before the 2009 surgeries were performed. Appellant also asserts that the appeals officer erred by not addressing NRS 616C.390(8), which applies when compensation is sought for treatment received before seeking claim reopening, and that she would have sought reopening before receiving treatment but for Dr. Bronstein's error in processing her case. Respondents argue that the appeals officer correctly found that appellant had not met her burden of proof to reopen her claim and that NRS 616C.390(8) does not apply because there was no evidence that appellant required emergency treatment.

Having reviewed the parties' briefs and appendix, we conclude that substantial evidence supports the appeals officer's determination that reopening was not warranted. *See* NRS 616C.390(4); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008) (setting forth the applicable standard of review). Dr. Bronstein reported that

appellant's current condition was "likely related" to her previous industrial condition and testified that there was a ten-percent cross-association between carpal tunnel syndrome and trigger finger phenomenon. But he also noted that trigger finger phenomenon has many causes and that he could not conclude whether appellant's industrial carpal tunnel syndrome had fully resolved. Although the record does demonstrate that appellant's condition had changed after claim closure, substantial evidence nonetheless supports the appeals officer's determination that appellant failed to prove by clear and convincing evidence that her 2009 condition was primarily caused by her prior industrial condition. *See* NRS 616C.390(4) (setting forth the requirements for claim reopening); *see also Wright v. State, Dep't of Motor Vehicles*, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005) (recognizing that substantial evidence may be inferred from the lack of certain evidence); *Langman v. Nev. Adm'rs, Inc.*, 114 Nev. 203, 209-10, 955 P.2d 188, 192 (1998) (explaining that this court will not substitute its judgment regarding the weight or credibility given to evidence for that of the appeals officer).

To the extent that appellant relies on NRS 616C.390(8) to obtain compensation for the treatment she received before seeking claim reopening, this argument necessarily fails based on our conclusion that the appeals officer properly refused to reopen the claim. *See* NRS 616C.390(8) (allowing compensation for treatment received before seeking reopening in certain circumstances). Accordingly, because the appeals officer did not err or abuse her discretion in denying reopening of appellant's claim, we affirm the district court's order denying judicial review. *See Vredenburg*, 124 Nev. at 557 & n.4, 188 P.3d at 1087-88 & n.4

(explaining that this court will not disturb the appeals officer's factual findings on judicial review if they are supported by substantial evidence).

It is so ORDERED.[1]

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Ronald J. Israel, District Judge
Persi J. Mishel, Settlement Judge
Diaz & Galt, LLC/Reno
Floyd, Skeren & Kelly
Eighth District Court Clerk

[1]To the extent that appellant's arguments have not been addressed, we conclude those arguments lack merit.