IN THE SUPREME COURT OF THE STATE OF NEVADA

KAREN MAURER AND EMPLOYERS INSURANCE COMPANY OF NEVADA,
Appellants,
vs.
WESTLAKE VIDEO AND JEFF LEVIN,
Respondents.

No. 35735

FILED

APR 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondents' petition for judicial review. Respondents, Westlake Video and Jeff Levin, sought workers' compensation coverage for appellant, Karen Maurer, in order to create a bar to her separate civil negligence action against them under the exclusive remedy provisions of NRS 616A.020. The order overturned an administrative appeals officer's determination that Maurer's injury did not arise out of and in the course of her employment.

NRS 616C.180 requires that a party seeking workers' compensation coverage for a stress-related injury prove by clear and convincing evidence that the injury arose from his or her employment. Maurer testified before the appeals officer that she suffered only mental injuries. The only suggestion of physical injury appears in Maurer's separate civil complaint against the respondents. This complaint alone does not support a finding of physical injury rather than mental stress-

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related injury.[1] Therefore, the higher burden of proof governed respondents' claim for workers' compensation coverage.

Interestingly, the appeals officer found that respondents could not meet a less demanding preponderance of evidence standard, the standard governing ordinary claims of work-related physical injuries.[2] Although the appeals officer applied the wrong standard, any error arising from the utilization of this standard was harmless because reliance upon the lesser standard inured to respondents' benefit.

We will not overturn an administrative agency's findings of fact that are supported by substantial evidence.[3] We review an administrative agency's conclusions of law de novo.[4] When, however, the agency's conclusions of law are closely related to the agency's view of the facts, the substantial evidence standard applies.[5]

The district court concluded that because the appeals officer found no personal relationship existed between Maurer and Kaiser, she

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[1]See Sprouse v. Wentz, 105 Nev. 597, 606, 781 P.2d 1136, 1141 (1989) (allegations in complaint which are not supported by other evidence do not create substantial evidence).

[2]See NRS 616C.150(1).

[3]Roberts v. SIIS, 114 Nev. 364, 367, 956 P.2d 790, 791-92 (1998); see NRS 233B.135(3)(e) (agency decision may be set aside if "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record").

[4]SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).

[5]SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993); see also Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (agency's conclusions of law are entitled to deference when closely related to agency's view of the facts).

should have found an injury arising out of the employment. We conclude that the district court misinterpreted our holdings in Heitman v. Bank of Las Vegas[6] and McColl v. Scherer.[7] Those cases stand for the proposition that an injury arises out of employment if the employee is assaulted because he or she merely happens to be present and working at the time of the assault.[8] In contrast, when the assailant seeks out the employee personally, the injury does not arise from employment.[9]

The appeals officer found that Kaiser assaulted Maurer because of who she was and not where she worked, that Maurer's employment did not place her in greater danger than a member of the general public, and that it was mere fortuity that the assault occurred at the Westlake store. Viewed in context with these findings, it is clear that the appeals officer's finding of no personal relationship simply meant that Maurer and Kaiser had no romantic involvement. Our cases do not turn on the existence of such a relationship.

It appeared from the record that Kaiser had previously approached Maurer when she was not at work, and that Kaiser inquired about Maurer with other employees. Under these facts, the appeals officer could and did find that Kaiser attacked Maurer out of lust for her personally and not because she was a Westlake employee.

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[6]87 Nev. 201, 484 P.2d 572 (1971).

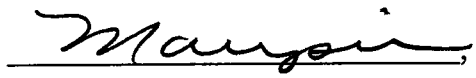
[7]73 Nev. 226, 315 P.2d 807 (1957).

[8]See Heitman, 87 Nev. at 203, 484 P.2d at 573; McColl, 73 Nev. at 231, 315 P.2d at 809-10.

[9]See Heitman, 87 Nev. at 203, 484 P.2d at 573; McColl 73 Nev. at 231, 315 P.2d at 809-10.

Thus, substantial evidence supported the appeals officer's conclusion that the respondents failed to prove by clear and convincing evidence that Maurer's injury arose out of her employment. We, therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for reinstatement of the appeals officer's decision.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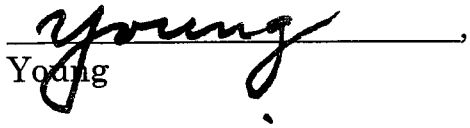
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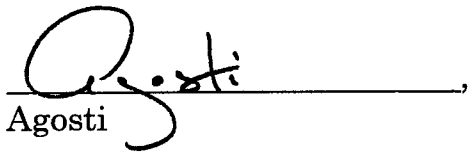
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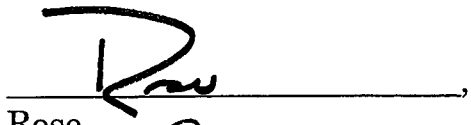
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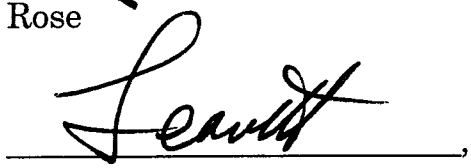
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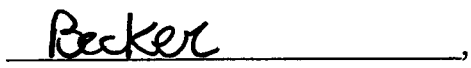
, J.
Becker

cc: Hon. Valorie Vega, District Judge
Beckett & Yott, Ltd./Carson City
Wieczorek & Associates
Jerome A. DePalma
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Clark County Clerk