

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM C. SIMPSON,
Appellant,
vs.
DOMINOS PIZZA; AND SEDGWICK
CMS,
Respondents.

No. 62787

FILED

MAR 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Appellant William C. Simpson suffered an industrial injury to his right wrist when he was employed by respondent Dominos Pizza as a delivery driver. Appellant received workers' compensation benefits, including a permanent partial disability award and vocational rehabilitation benefits. This appeal arises from respondent Sedgwick CMS's denial of appellant's request for permanent total disability (PTD) benefits. The appeals officer affirmed the denial of PTD benefits, and the district court denied appellant's petition for judicial review. This appeal followed.

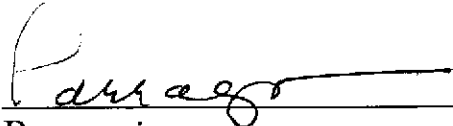
Having considered appellant's pro se appeal statement and the record on appeal, we conclude that substantial evidence supports the appeals officer's decision. Appellant requested PTD benefits under the odd-lot doctrine, which allows workers who are not altogether incapacitated for work to be deemed permanently and totally disabled if they are "so handicapped that they will not be regularly employed in any

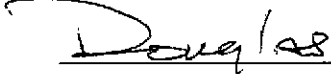
well-known branch of the labor market.” *Ranieri v. Catholic Cmty. Servs.*, 111 Nev. 1057, 1062, 901 P.2d 158, 161 (1995); *see also* NRS 616C.435(2). Factors to be considered in applying the odd-lot doctrine include the worker’s age, experience, training, and education. *Ranieri*, 111 Nev. at 1062, 901 P.2d at 161.

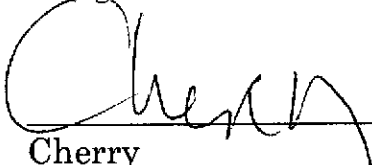
The appeals officer considered the evidence presented by the parties and found that while appellant’s age and disability may be obstacles to employment, his intelligence, resourcefulness, vast history of entrepreneurial ventures, and language abilities weighed against a PTD finding under the odd-lot doctrine. The appeals officer found the testimonies of Jeff Shea and Eve Brown, appellant’s rehabilitation counselor and job placement counselor, credible and persuasive when they opined that appellant could find employment with pay equivalent to or better than his previous job. *See Westin Hotel v. Indus. Comm’n of Ill.*, 865 N.E.2d 342, 357-58 (Ill. App. Ct. 2007) (concluding that evidence from a rehabilitation services provider or a vocational counselor is required, in addition to medical evidence, to support a PTD finding under the odd-lot doctrine). Additionally, Dr. Douglas Seip’s medical reporting cleared appellant to return to work with certain physical restrictions. While the record may contain conflicting evidence regarding appellant’s ability to secure and maintain employment, this court will not reweigh the evidence or replace the appeals officer’s judgment as between two reasonable but conflicting views. *See* NRS 233B.135; *Nellis Motors v. State, Dep’t of Motor Vehicles*, 124 Nev. 1263, 1269-70, 197 P.3d 1061, 1066 (2008) (explaining that this court will not reweigh the evidence, reassess witness credibility, or substitute our judgment for that of the appeals officer on questions of fact). As substantial evidence supports the appeals officer’s

determination that appellant did not qualify for PTD benefits under the odd-lot doctrine, the appeals officer did not abuse his discretion, and we affirm the district court's order denying judicial review. *See Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557 & n.4, 188 P.3d 1084, 1087 & n.4 (2008) (noting that the appeals officer's decision will not be disturbed if supported by substantial evidence, which is evidence that a reasonable person could accept as adequately supporting a conclusion).

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Kerry Louise Earley, District Judge
William C. Simpson
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk