

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE J. OZMUN,
Appellant,
vs.
JKH INC.; HARTFORD INSURANCE
GROUP; AND SPECIALTY RISK
MANAGEMENT,
Respondents.

No. 63031

FILED

MAR 13 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; Gloria Sturman, Judge.

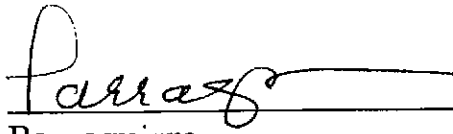
Appellant Steve J. Ozmun was working as a pool technician for respondent JKH Inc. when he was in a car accident that resulted in injuries. Appellant did not complete a C-4 injury form until nearly five months after the accident, and JKH's workers' compensation insurer denied the claim as untimely and insufficient to show that the injuries occurred within the course and scope of appellant's employment. The appeals officer affirmed the claim denial, concluding that appellant was returning home for personal reasons unrelated to his employment at the time of the accident. The district court denied judicial review and this appeal followed.

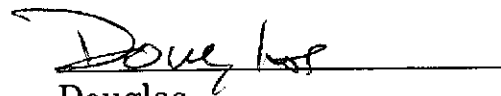
Having considered the parties' briefs and appellant's appendix, we conclude that substantial evidence supports the appeals officer's determination that appellant failed to meet his burden to show

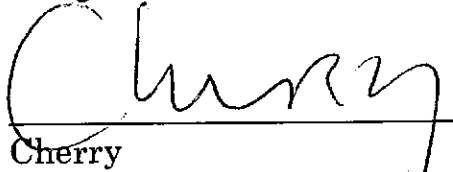
that his injuries arose out of and were in the course and scope of his employment. See NRS 616C.150 (setting forth the standard for claim acceptance). The parties dispute whether appellant was returning home for personal reasons or to pick up work supplies when the accident occurred. The appeals officer considered the evidence and testimony presented by the parties and determined that the testimony of Gerald Harward, JKH's owner, was the most credible and persuasive, and while the record may contain conflicting evidence regarding this factual issue, 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(3); *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 was returning home for personal reasons at the time of the accident, the appeals officer did not abuse her discretion, and we therefore affirm the district court's order denying judicial review. See *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 286-87, 183 P.3d 126, 131 (2008) (explaining that the going and coming rule generally precludes workers' compensation benefits for employee injuries that occur during travel to or from work); *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.¹


Parraguirre, J.


Douglas, J.


Cherry, J.

cc: Hon. Gloria Sturman, District Judge
Persi J. Mishel, Settlement Judge
Benson, Bertoldo, Baker & Carter, Chtd.
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk

¹Appellant's argument that he was an on-call employee and subject to an exception to the going and coming rule is waived on appeal because he did not raise this argument before the appeals officer. *See State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (explaining that because judicial review of administrative decisions are limited to the administrative record, a party waives an argument made for the first time to the district court on judicial review).