IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREEN VALLEY RANCH/STATION CASINOS, INC.; AND YORK RISK SERVICES GROUP, INC.,
Appellants,
vs.
BLANCA DOMINGUEZ,
Respondent.

No. 64635

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

While working as a guest room attendant for appellant Green Valley Ranch, respondent Blanca Dominguez stood on her tiptoes to reach up high into a guest room closet. Dominguez heard a loud pop and suddenly felt pain in her knee. Thereafter, Dominguez went to Fremont Medical Center where she was diagnosed with a knee sprain. Dominguez later returned for further treatment because her knee pain had not improved. As a result, an MRI was ordered on Dominguez's knee, which revealed a meniscus tear. Dominguez was then referred to an orthopedic surgeon, Dr. Mervyn Fouse.

Dr. Fouse diagnosed Dominguez with a complex tear of the posterior horn of the medial meniscus "in association with preexisting patellofemoral compartment chondromalacia." He did not state, however, that the meniscus tear was preexisting or that the preexisting condition caused the meniscus tear. Dr. Fouse examined Dominguez twice more in the following months, when he noted that there was presumably a twisting component to the episode of reaching up high and that the tear was a result of Dominguez's industrial accident. In both reports, Dr. Fouse was clear

that the meniscus tear was caused by work-related injury and not by any preexisting condition.

Dominguez filed a workers' compensation claim, which was granted, with the scope of injury limited to a knee sprain. She then appealed that decision, seeking coverage for the meniscus tear along with the knee sprain, but the appeals officer affirmed the denial of her claim as to the meniscus tear. In resolving the claim, the appeals officer concluded that Dominguez had failed to establish by a preponderance of the evidence that the meniscus tear was a result of the industrial injury. Specifically, the appeals officer found that Dr. Fouse had originally attributed the meniscus tear to Dominguez's preexisting condition, only later attributing the tear to her industrial injury based on an accompanying assumption that there had been a twisting component to the accident. The appeals officer found that the earlier attribution to the preexisting condition was more credible, apparently because any conclusion that the injury was work-related had to be based on "speculation as to whether there was a twisting element in her industrial accident." The appeals officer also rejected the conclusion of an independent medical examination by Dr. Timothy Sutherland, who opined that it was "medically probable" that the meniscus tear was related to Dominguez's industrial accident.

Dominguez filed a petition for judicial review, which the district court granted, concluding that the appeals officer had abused her discretion by relying on only a portion of the record rather than basing her decision on the record as a whole. This appeal followed. On appeal, Green Valley Ranch argues that substantial evidence supported the appeals officer's decision and that Dominguez failed to establish by a preponderance of the evidence that the injury she sustained while working included a meniscus tear. Dominguez disagrees.

Like the district court, we review an appeals officer's decision in a workers' compensation matter for clear error or abuse of discretion. NRS 233B.135(3); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008). We "will reverse an agency decision that is clearly erroneous in light of reliable, probative, and substantial evidence on the whole record." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 425, 851 P.2d 423, 425 (1993). The central inquiry is whether the agency's decision is supported by substantial evidence, which is evidence that a reasonable mind might accept as adequate to support the agency's conclusion. *Id.* at 424, 851 P.2d at 424-25.

Having reviewed the parties' briefs and the record on appeal, we conclude that the district court correctly found that the appeals officer's determination—that respondent failed to establish, by substantial evidence, that the meniscus tear was a result of the industrial injury—was, itself, not supported by substantial evidence. Specifically, Dr. Fouse's description that the meniscus tear was "in association with" a preexisting condition did not state that the tear was caused by the preexisting condition, and thus, did not contradict his express conclusion that the meniscus tear was industrial. Further, the appeals officer's decision was based in part on her apparent conclusion that the meniscus tear required a twisting component. Although Dr. Fouse presumed that a twisting motion had occurred, he did not state that it necessarily had to have occurred, and none of the other physicians indicated that there had to have been a twisting motion for the industrial injury to have caused the meniscus tear. To the contrary, Dr. Sutherland knew that Dominguez was unsure whether a twisting motion

occurred but still concluded that it was medically probable that the injury was industrial.[1]

As every doctor who offered an opinion on causation concluded that the meniscus tear was caused by the industrial accident and no evidence in the record suggested that the tear was caused by anything other than the industrial accident, a reasonable mind could not come to the conclusion, based on a review of the record as a whole, that Dominguez had failed to demonstrate by a preponderance of the evidence that the meniscus tear was caused by the industrial accident.[2] Thus, the appeals officer's determination was not supported by substantial evidence, and, as a result, the district court properly reversed the appeals officer's decision. *United Exposition Serv. Co.*, 109 Nev. at 424, 851 P.2d at 424. We therefore

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

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[1]Green Valley's argument that Dr. Sutherland had to testify to a greater degree of certainty than medical probability lacks merit because a physician must testify to a degree of "reasonable medical probability." *United Exposition Serv. Co.*, 109 Nev. at 424-25, 851 P.2d at 425.

[2]Although the appeals officer cast her decision at least partly in terms of credibility, and we will not substitute our opinion for that of the appeals officer on credibility determinations, *see Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005), the appeals officer's credibility finding was based on her apparent conclusion that Dr. Fouse's earlier report conflicted with his later ones. As discussed above, however, that conclusion was not supported by substantial evidence.

cc: Hon. Ronald J. Israel, District Judge
Janet Trost, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Allan P. Capps
Eighth District Court Clerk