

IN THE SUPREME COURT OF THE STATE OF NEVADA

JON HANNAH,  
Appellant,  
vs.  
CLARK COUNTY SCHOOL DISTRICT,  
Respondent.

No. 36041

**FILED**

**MAY 14 2002**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jon Hannah's petition for judicial review in a workers' compensation matter. On appeal, Hannah argues that substantial evidence does not support the appeals officer's affirmance of the hearing officer's decision denying Hannah's claim for his neck injury, and that the appeals officer erred by not admitting two of Hannah's exhibits at the hearing. We disagree, and accordingly, we affirm the order denying judicial review.

In December 1992, Hannah suffered a workplace injury when he slipped on ice while pushing a handcart loaded with boxes. His self-insured employer, respondent Clark County School District, accepted Hannah's claims for injuries to his stomach, right foot and right arm.

In February 1994, Hannah was evaluated for pain in his left foot and left hip. Hannah attributed the pain to his December 1992 injury. The physicians disagreed, attributing his complaints to poor arch support and obesity. The School District denied Hannah's request to include the left foot and left hip in the 1992 claim.

In February 1995, Hannah reported an injury to his neck from helping to restrain a student. Due to Hannah's history of neck pain and the evidence of a degenerative cervical condition, Hannah's examining

doctor could not establish a causal connection between Hannah's complaints and the February 1995 incident. Accordingly, the Clark County School District denied Hannah's neck claim.

Hannah appealed the denial of both his claims. A hearing officer consolidated the appeals and affirmed the School District's determination to deny the claims. Hannah appealed the hearing officer's decision. At the appeal hearing, the appeals officer refused to admit two of Hannah's exhibits into evidence because Hannah had not complied with a prehearing order setting a deadline for the submission of documents. The appeals officer entered a decision and order upholding the claim denials and the hearing officer's decision. The district court denied Hannah's petition for judicial review of the appeals officer's decision, finding that the appeals officer's decision was supported by the record. On appeal to this court, Hannah only addresses his claim for his neck injury, and requests that the appeals officer's order be reversed with respect to that claim. Consequently, we do not consider the denials regarding Hannah's left hip and left foot.

Hannah is only entitled to worker's compensation benefits if he demonstrates, by a preponderance of the evidence, that his injuries arose out of and in the course of his employment.<sup>1</sup> In the workers' compensation context, "arose out of" entails an inquiry into whether there is a causal connection between the injury and the employee's work.<sup>2</sup> "[A]

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<sup>1</sup>NRS 616C.150.

<sup>2</sup>Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997).

claimant must demonstrate that the origin of the injury is related to some risk involved within the scope of employment."<sup>3</sup> The trier of fact must examine the totality of the circumstances in resolving whether an injury arose out of the scope of employment.<sup>4</sup> Finally, to meet the "preponderance of the evidence" standard, a claimant must demonstrate, with medical testimony, that it is "more probable than not" that the occupational environment was the cause of the injury.<sup>5</sup>

A hearing officer's credibility determination is not open to appellate review.<sup>6</sup> In support of the appeals officer's determination, one doctor compared x-rays taken of Hannah's neck prior to his injury and x-rays taken after Hannah's injury, and could not establish a causal connection between the neck injury and the work incident. Moreover, when a second doctor performed an independent medical evaluation on Hannah after his 1995 injury, Hannah did not inform the doctor that he injured his neck nor did he complain of neck pain. The appeals officer found the testimony of these doctors credible.<sup>7</sup> Although a chiropractic

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<sup>3</sup>Id.

<sup>4</sup>Id.

<sup>5</sup>Seaman v. McKesson Corp., 109 Nev. 8, 10, 846 P.2d 280, 282 (1993).

<sup>6</sup>Id. at 11, 846 P.2d at 283.

<sup>7</sup>See Roberts v. SIIS, 114 Nev. 364, 367, 956 P.2d 790, 792 (1998) (stating that "this court may not substitute its judgment for that of the appeals officer on matters of weight, credibility, or issues of fact"); SIIS v. Bokelman, 113 Nev. 1116, 1119, 946 P.2d 179, 181 (1997) (stating that "[o]n questions of fact, an administrative agency's decision is given deference; therefore, a reviewing court must confine its inquiry to

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doctor determined that Hannah's injuries were related to his work, the findings of the other two doctors were unequivocal regarding the lack of causation. Therefore, based on the testimony of the two doctors who concluded that no causal connection existed between Hannah's neck injury and the workplace injury, the appeals officer could conclude that Hannah had not proved by a preponderance of the evidence that his injury arose out of and in the course of his employment.

NAC 616C.297 provides that all parties shall file with the appeals officer and with the other party all documents to be introduced as evidence at the hearing.<sup>8</sup> Further, NAC 616C.282 provides that if a party fails to comply with NAC 616C.274 through NAC 616C.336, the hearing or appeals officer may restrict or prohibit the introduction of evidence.<sup>9</sup> Additionally, a party that fails to obey a pretrial order may be prohibited from introducing into evidence matters designated in the order.<sup>10</sup> Therefore, since Hannah failed to timely submit all the documents that he wished to introduce as evidence at the hearing, the appeals officer had discretion to prohibit the introduction of the evidence.

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*... continued*

determining whether the record provides substantial evidence supporting the administrative agency's decision").


<sup>8</sup>NAC 616C.297(1)(a).

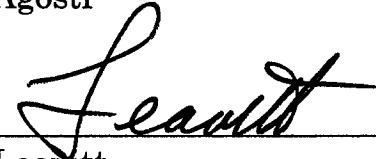
<sup>9</sup>NAC 616C.282(2).

<sup>10</sup>NRCP 16(f); NRCP 37(b)(2)(B).

Substantial evidence exists in the record to support the appeals officer's determination. Therefore, we AFFIRM the order of the district court denying judicial review of the appeal officer's decision.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Stephen L. Huffaker, District Judge  
Edward M. Bernstein & Associates  
L. Steven Demaree  
Clark County Clerk