

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PALACE STATION/STATION
CASINOS, INC.; AND YORK RISK
SERVICES GROUP, INC.,
Appellants,
vs.
RATANA HOOD,
Respondent.

No. 65754

FILED

SEP 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
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; Joanna Kishner, Judge.

Respondent Ratana Hood worked as a busser in a café located within appellant Palace Station/Station Casinos, Inc. One of her duties involved putting trash from bussed items into the garbage on one side of her work station and then loading those items into a dishwasher located on the other side of her work station. While performing these tasks one day, her ankle did not move with her and she fell. Following her fall, Hood was diagnosed with an ankle fracture requiring surgery.¹

Hood then filed a claim for workers' compensation benefits, which appellants denied. She appealed the denial of her claim to a workers' compensation hearing officer, but the hearing officer affirmed the denial of her claim. Hood then appealed the hearing officer's decision and

¹The parties do not dispute that the floor was clean and dry at the time of Hood's accident.

an appeals officer overturned the hearing officer, determining that Hood's injury was compensable because she had established, by a preponderance of the evidence, that her injury arose out of and in the course of her employment. Appellants filed a petition for judicial review of this decision, which was denied, and this appeal followed.

In reviewing administrative decisions, our primary function is to determine whether the appeals officer's decision was arbitrary or capricious and thus, an abuse of discretion. NRS 233B.135(3); *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993). We review an administrative officer's factual findings for clear error or arbitrary abuse of discretion and will not overturn findings supported by substantial evidence. *City of N. Las Vegas v. Warburton*, 127 Nev. ___, ___, 262 P.3d 715, 718 (2011). Substantial evidence is that which a reasonable person may accept as adequate to support a decision. *Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009).

On appeal, appellants contend that the appeals officer's determination that Hood's injuries arose out of and in the course of her employment was not supported by substantial evidence because Hood did not establish a link between her workplace conditions and how those conditions caused the injury as she was unable to identify what caused her to fall. See NRS 616C.150(1) (providing that an injured employee is not entitled to workers' compensation unless it is established, by a preponderance of the evidence, that the employee's injury arose out of and in the course of his or her employment); *Mitchell v. Clark Cnty. Sch. Dist.*, 121 Nev. 179, 182-84, 111 P.3d 1104, 1106-07 (2005) (providing that workplace injuries are only compensable when causally connected to

employment). They further argue that, under *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 353, 240 P.3d 2, 6-7 (2010), Hood was not placed at an increased risk and that her own conduct caused the accident, mandating a conclusion that her injuries did not arise out of her employment as required by NRS 616C.150(1). Hood counters that the appeals officer's decision was correct under *Phillips* because twisting between the garbage can and the dishwasher caused her to face an increased risk greater than that faced by the general public.

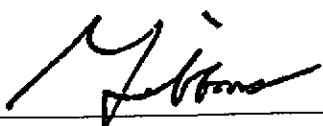
Under *Phillips*, the risk that led to Hood's injury was a neutral risk,² which is compensable if it meets the increased-risk test. 126 Nev. at 351-53, 240 P.3d at 6. This test requires Hood to show that the origin of her injury is related to some risk involved within the scope of her employment that is greater than that faced by the general public. *Id.* at 353, 240 P.3d at 7. For example, in *Phillips*, the Nevada Supreme Court determined that the employee faced an increased risk regarding her fall down a set of stairs because she was required to use the stairs more frequently than a member of the public would be required to. *Id.* at 354, 240 P.3d at 7.

We conclude that substantial evidence supports the appeals officer's conclusion that Hood's injury arose out of and in the course of her

²The other types of risks discussed in *Phillips* are employment risks, which include obvious industrial risks such as slips, falls, and trips due to conditions caused by the employer and are generally compensable, and personal risks, which include falls caused by bad knees, epilepsy, or other preexisting conditions that are not attributable to the person's employment and are generally not compensable. 126 Nev. at 351, 240 P.3d at 5. Here, neither of the parties have alleged that employment risks or personal risks led to Hood's injury.

employment. See NRS 616C.150(1). Before the appeals officer, Hood asserted that the injury was caused by her having to twist back and forth between the garbage can and the dishwasher in order to complete her duties as a busser, and the appeals officer found that the evidence supported that assertion. Thus, Hood did identify the cause of her injury, despite appellants' argument to the contrary. It was also undisputed that twisting back and forth in this fashion is an action that the general public is not required to take. Under these circumstances, Hood was exposed to a risk greater than that faced by the general public, and thus, the appeals officer did not abuse her discretion in finding that Hood's injury was compensable. See *Phillips*, 126 Nev. at 353, 240 P.3d at 7; *United Exposition Serv.*, 109 Nev. at 423, 851 P.2d at 424. Accordingly, we conclude the district court properly denied the petition for judicial review and we therefore affirm that determination.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Joanna Kishner, District Judge
Janet Trost, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Nevada Attorney for Injured Workers/Las Vegas
Nevada Attorney for Injured Workers/Carson City
Eighth District Court Clerk