

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY,
Appellant,
vs.
BRIAN O'NEAL,
Respondent.

No. 64462

FILED

OCT 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition for judicial review in an occupational disease matter. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Respondent Brian O'Neal is a firefighter who was diagnosed with atrial fibrillation. O'Neal subsequently filed a claim under NRS 617.457, which provides that heart disease contracted by a firefighter, employed for five years or more, is conclusively presumed to have arisen out of and in the course of employment. Appellant Clark County rejected O'Neal's claim on the grounds that atrial fibrillation is not a disease of the heart and that O'Neal had not been temporarily or permanently disabled by the condition. Subsequently, a hearing officer affirmed the denial on both grounds. Thereafter, without addressing whether atrial fibrillation is a heart disease, the appeals officer affirmed the denial of benefits on the ground that O'Neal was not disabled by the condition. O'Neal filed a petition for judicial review, which was granted. In granting the petition, the district court concluded that O'Neal was disabled by the atrial fibrillation because he was prevented from working for four hours while he

was being treated for the condition. The court went on to conclude that atrial fibrillation is a disease of the heart. This appeal followed.

This court, like the district court, may set aside, in whole or in part, a final decision of an administrative agency where the petitioner's substantial rights have been prejudiced because the final decision (1) violates statutory provisions, (2) was affected by error of law, (3) was clearly erroneous, or (4) was "[a]rbitrary or capricious or characterized by abuse of discretion." NRS 233B.135(3); *City of Las Vegas v. Lawson*, 126 Nev. 567, 571, 245 P.3d 1175, 1178 (2010) (explaining that, when reviewing a district court's order resolving a petition for judicial review, the appellate court applies the same analysis as the district court and "evaluate[s] the agency's decision for clear error or an arbitrary and capricious abuse of discretion" (internal quotation marks omitted)). "The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid." NRS 233B.135(2).


NRS 617.457(2) states that "diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter." And NRS 617.060 defines disablement as "the event of becoming physically incapacitated by reason of an occupational disease." Thus, a firefighter must have, among other conditions, a disabling heart disease to gain coverage under NRS 617.457.

Here, although O'Neal left work to have his atrial fibrillation diagnosed and treated, there is no indication in the record that he was ever physically incapacitated from working by the atrial fibrillation. On the contrary, the doctor who examined O'Neal and diagnosed him with atrial fibrillation released him to full-duty work that same day. Moreover,

although Dr. William Resh later opined that O'Neal should have been off of work until all cardiac testing was completed to determine his fitness for duty, Dr. Resh treated O'Neal in the days that followed his diagnosis, but did not order O'Neal to take off work or place any restrictions on the work that he could perform. Under these circumstances, we cannot conclude that the appeals officer violated any statutory provisions, decided the case based on an error of law, clearly erred, or otherwise acted arbitrarily or capriciously in concluding that O'Neal was not disabled by the atrial fibrillation. See NRS 233B.135(3); *Lawson*, 126 Nev. at 571, 245 P.3d at 1178. As a result, we conclude that the district court improperly granted the petition for judicial review, and we therefore reverse the grant of judicial review and affirm the decision of the appeals officer denying O'Neal's claim for benefits.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Persi J. Mishel, Settlement Judge
Lynne & Associates
Law Offices of Virginia L. Hunt
Eighth District Court Clerk