

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERNANDO COOK,
Appellant,
vs.
REBEL OIL; AND MEADOWBROOK
INSURANCE GROUP,
Respondents.

No. 65660

FILED

OCT 23 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review of an administrative agency's findings in a workers' compensation case. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

RELEVANT FACTS AND PROCEDURAL HISTORY

Appellant Fernando Cook was employed by respondent Rebel Oil as a cashier at a gas station located in Pahrump, Nevada. On the night of July 29, 2010, Cook was the only Rebel Oil employee working the graveyard shift; however, two floor cleaners employed by Dynamic Cleaning were also working in the store. A customer came into the store while Cook was in the restroom, and when Cook exited the restroom the two engaged in a verbal altercation. The customer subsequently exited the store from a door that leads to the gas pumps and Cook exited through a side door toward the parking lot. Outside of the view of any surveillance cameras, a physical altercation between Cook and the customer ensued.

Cook claims he injured his hand fending off blows from the customer, while Rebel Oil and its workers' compensation carrier, Respondent Meadowbrook Insurance Group (Meadowbrook), claim Cook left the store with the intention of harming the customer. No witness viewed the entire altercation, although one floor cleaner witnessed Cook strike the customer.¹

Cook filed a workers' compensation claim with Meadowbrook for his hand injury. Meadowbrook denied the claim via letter, and asserted Cook failed to meet the criteria of NRS 616C.150(1). Cook appealed this denial to the Nevada Department of Administration Hearings Division, where a hearing officer affirmed the denial. Cook filed an appeal with the Appeals Division of the Nevada Department of Administration, which also affirmed the denial in an order containing findings of fact and conclusions of law. Cook then filed a petition for judicial review of the appeals officer's decision, and asked the district court to set aside the order. The district court denied the petition for judicial review and affirmed the appeals officer's decision. This appeal followed.

ANALYSIS

We review decisions of the Nevada Department of Administration under an abuse of discretion standard. NRS 233B.135(3)(f); *Constr. Indus. Workers' Comp. Grp. ex rel. Mojave Elec. v. Chalue*, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003). Accordingly, the

¹Because the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

central inquiry is “whether substantial evidence in the record supports the agency decision.” *Id.* Substantial evidence is evidence which “a reasonable mind might accept as adequate to support a conclusion.” *Rio All Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 603-04, 939 P.2d 1043, 1045 (1997) (quoting *Schepcoff v. SIIS*, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993)).

On appeal, Cook argues the district court erred by denying his petition for judicial review because the Department of Administration abused its discretion on two accounts: 1) by determining Cook failed to establish by a preponderance of the evidence that the injury arose out of and in the course of his employment under NRS 616.C150(1), and 2) by determining Cook’s injury was caused by Cook’s willful intention to injure another under NRS 616C.230(1)(b). We address each argument in turn.

Substantial evidence supports the appeals officer’s finding that Cook’s injury did not arise out of and in the course of his employment

NRS 616C.150(1) places the burden on the employee to “establish by a preponderance of the evidence that the employee’s injury arose out of and in the course of his or her employment.” “[W]hether an injury occurs within the course of the employment refers merely to the time and place of employment, *i.e.*, whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005). Further, “[a]n accident or injury is said to arise out of employment when there is a causal connection between the injury and the employee’s work.” *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 604,

939 P.2d 1043, 1046 (1997). Therefore, the injured employee “must establish a link between the workplace conditions and how those conditions caused the injury,” and “demonstrate that the origin of the injury is related to some risk involved within the scope of employment.”² *Id.*

Here, there is substantial evidence in the record to support the appeals officer’s conclusion that Cook’s injury did not arise out of and in the course of his employment as a gas station cashier. For example, two witnesses testified the store was not closed as Cook alleges. Further, although Cook claims he was not angry when he left the store and had no intention of confronting the customer, one of the floor cleaners testified Cook looked upset and exited the store soon after the customer did. The appeals officer assessed the credibility of the witnesses and ultimately determined the evidence established that when Cook left the store, he was not acting within the course of his employment. Although Cook disagrees with how much weight the appeals officer gave certain pieces of evidence and testimony, it is not for this court to re-weigh evidence properly considered at the administrative level. Indeed, this court is explicitly barred from weighing evidence on appeal. *See McClanahan v. Raley’s,*

²Although NRS 616C.150(1) “contemplates two separate inquiries: whether the injury ‘arose out of the employment and whether the injury arose ‘in the course of the employment,” *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 283, 183 P.3d 126, 128 (2008), the parties conflate the two, arguing that Cook’s injury did (or did not) arise in “the course and scope” of his employment.

Inc., 117 Nev. 921, 924, 34 P.3d 573, 575 (2001). Because there is substantial evidence in the record to support the appeals officer's determination that Cook's injury did not arise out of and in the course of his employment, the decision was not an arbitrary abuse of discretion.

Substantial evidence supports the appeals officer's finding that Cook's injury was caused by Cook's willful intention to injure another

NRS 616C.230(1)(b) prohibits compensation for injuries "[c]aused by the employee's willful intention to injure another."

Here, after reviewing the testimony and other evidence, the appeals officer determined Cook intentionally struck the customer. This is supported by substantial evidence in the record, such as the floor cleaner's testimony that Cook was upset before he hit the customer and that the customer did not try to defend himself. The appeals officer also found that the lack of physical evidence that Cook was struck about the face and chest tended to show Cook was the aggressor. In contrast, the only evidence to support Cook's recitation of the facts was Cook's own testimony and the testimony of his manager that she knew of no other fights Cook started during Cook's employment at Rebel Oil. Because there is substantial evidence in the record to support the appeals officer's determination that Cook intended to injure the customer, the decision was not arbitrary or an abuse of discretion.³


³We have also considered Cook's argument that the appeals officer misapplied NRS 616C.230(1)(b) and conclude it is without merit.

CONCLUSION

Substantial evidence in the record supports the appeals officer's findings that Cook's injury did not arise out of and in the course of his employment and that Cook's injury was caused by his willful intention to injure another. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kimberly A. Wanker, District Judge
Janet Trost, Settlement Judge
Stovall & Associates
Alverson Taylor Mortensen & Sanders
Black & LoBello
Nye County Clerk