IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ESCOTO,
Appellant,
vs.
NEVADA BEVERAGE,
Respondent.

No. 67504

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; Jessie Elizabeth Walsh, Judge.

In 2008, appellant Michael Escoto claims to have suffered an industrial injury while working for respondent Nevada Beverage as a delivery driver. While loading cases of beer in a cooler, Escoto states he heard a popping noise in his back and had shooting pains run down his leg. He sought workers' compensation benefits, which Nevada Beverage denied. Part of the reason for its denial was that in the approximately two years preceding this incident, Escoto had been seeing a physician for back pain and numbness in his legs. Thus, Nevada Beverage concluded that Escoto's injury pre-dated the incident and was neither work-related nor compensable.

Escoto appealed Nevada Beverage's denial, and, ultimately, an appeals officer found that Escoto failed to meet his burden in establishing a compensable industrial claim. The district court later denied Escoto's petition for judicial review. The Nevada Supreme Court, however, reversed and remanded the district court's denial of the petition, stating that the doctor whom the appeals officer relied on failed to discuss the

15-901568

significance of a broad central disc herniation noted in Escoto's post-incident MRI, which was not noted in an MRI Escoto completed a few weeks prior to the incident.[1] *Escoto v. Nev. Beverage*, Docket No. 55072 (Order of Reversal and Remand, April 28, 2011). The supreme court then concluded that it could not determine whether the appeals officer's decision was supported by substantial evidence, and remanded the matter "so that the appeals officer may set forth further findings and conclusions addressing the perceived shortcomings" in the evidence. *Id.*

On remand, the appeals officer sent both MRIs to a new radiologist for an independent imaging review, as the pre-incident and post-incident MRIs were previously read by different radiologists. The appeals officer then sent both MRIs, the independent imaging review, and a copy of the supreme court's order to the physician whose opinion was relied on in the prior decision. Both the radiologist's independent imaging review and the physician's second opinion opined that there was no significant difference between the two MRIs. Based on this additional evidence, the appeals officer again found that Escoto's injuries were not compensable. After the district court denied Escoto's petition for judicial review of this decision, this appeal followed.

In reviewing administrative decisions, this court's 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

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[1]The initial MRI was done as part of Escoto's treatment for back issues pre-dating the work incident.

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. 682, 686, 262 P.3d 715, 718 (2011). Substantial evidence is that which a reasonable person may accept as adequate to support an appeals officer's decision. *Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 56, 200 P.3d 514, 520 (2009).

On appeal, Escoto first contends that he presented substantial evidence demonstrating that his injury arose out of and in the course of his employment. *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 Cty. Sch. Dist.*, 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005) (providing that workplace injuries are only compensable when causally connected to employment). Nevada Beverage responds that, despite any evidence to the contrary presented by Escoto, substantial evidence supports the appeals officer's finding that the injury was not compensable.

Here, the record contains statements from two different physicians who opined that Escoto's post-incident MRI was not demonstrably different from his pre-incident MRI. In other words, these physicians found no new injury to Escoto's back as a result of his alleged work incident. Furthermore, although physicians employed by Escoto opined that he had new post-incident injuries, these physicians did not have the benefit of comparing the two MRIs when making their conclusions. Thus, to the extent that conflicting evidence was presented, we will not "substitute [our] judgment for that of the administrative agency concerning the weight of the evidence on questions of fact." *Weaver*

v. State, Dep't of Motor Vehicles, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005). As a result, we conclude that substantial evidence supports the appeals officer's decision that Escoto's injury did not arise out of and in the course of his employment and thus was not compensable.

Escoto next argues that the appeals officer erred in applying NRS 616C.175, which provides that a pre-existing non-industrial injury that is aggravated, precipitated, or accelerated by a subsequent injury that arose out of and in the course of the employee's employment is compensable, to his case because there was no evidence of a pre-existing non-industrial injury. Rather, Escoto asserts that his prior injuries were industrial because they were all caused by his employment with Nevada Beverage. Nevada Beverage asserts that Escoto never filed a prior claim for workers' compensation, and, therefore, any pre-existing injury must be non-industrial.

To prove that his prior injury was related to his employment with Nevada Beverage, Escoto testified that his prior back issues were caused by his job duties of lifting and carrying heavy boxes, and provided a statement[2] from his physician which Escoto asserts echoes that concern. The appeals officer, however, found that the physician statement Escoto relied on recommended that Escoto change jobs due to the heavy lifting requirements associated with his current job, but did not find that this document concluded that Escoto's injuries were caused by his current job.

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[2]Escoto also points to the medical intake form that he completed as support that his prior injury was industrial, but that form merely allowed Escoto to provide his medical history and voice his own concerns, and does not contain his physician's opinion regarding those concerns.

After weighing the evidence presented, the appeals officer determined that NRS 616C.175(1), which applies to pre-existing non-industrial injuries, was applicable here. The appeals officer's decision in this regard necessarily indicates that he found that Escoto's testimony was not credible, and that the evidence Escoto cited in support of his testimony did not amount to substantial evidence supporting a decision that Escoto's prior injury was industrial. *See Garcia*, 125 Nev. at 56, 200 P.3d at 520 (defining substantial evidence). On appeal from administrative decisions, courts will not "reweigh the evidence, reassess the witnesses' credibility, or substitute the administrative law judge's judgment with [their] own." *Nellis Motors v. State, Dep't of Motor Vehicles*, 124 Nev. 1263, 1269-70, 197 P.3d 1061, 1066 (2008). And, in light of the forgoing analysis, because we cannot substitute our judgment for that of the appeals officer or reweigh the evidence, we determine that the appeals officer did not err in applying NRS 616C.175(1).

Escoto's final argument on appeal is that, even if NRS 616C.175 applies, the only physician that applied the correct legal standard concluded that the industrial incident was a substantial contributing cause of Escoto's current condition. Escoto thus asserts that the appeals officer is bound by that conclusion. We disagree. Although one of Escoto's physicians did conclude that the industrial incident was a substantial contributing cause of Escoto's current condition, that conclusion was drawn by merely checking a box in a letter from Escoto's counsel, and was not based on the comparison of Escoto's two MRIs. The ultimate administrative decision demonstrates that the appeals officer did not find this evidence credible, likely in light of the two physicians that came to the opposite conclusion, and we will not substitute our judgment

for that of the appeals officer on this issue. *See Nellis Motors*, 124 Nev. at 1269-70, 197 P.3d at 1066.

For the foregoing reasons, we conclude that 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. Jessie Elizabeth Walsh, District Judge
Carolyn Worrell, Settlement Judge
Benson, Bertoldo, Baker & Carter, Chtd.
Law Offices of David Benavidez
Eighth District Court Clerk