

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BEST ENVIRONMENTAL; AND
AIG/CHARTIS INSURANCE,
Appellants,
vs.
DANIEL DALE,
Respondent.

No. 66920

FILED

DEC 29 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review in a workers' compensation matter. First Judicial District Court, Carson City; James E. Wilson, Judge.

Respondent Daniel Dale worked for appellant Best Environmental in a plant that recycled used oil. One of the machines in the plant became clogged, and Dale, along with two other employees, was tasked with cleaning the machine. Over the course of the three-week cleaning project, Dale was regularly covered with a mixture of water and oil from the machine. Although they had protective clothing, none of the employees were provided respirators.

Less than a month after the project ended, Dale reported to a doctor because he had experienced a cough, lung pain, and shortness of breath for approximately two weeks. He was diagnosed with pneumonia. Dale returned to the doctor multiple times with exacerbated symptoms, and was hospitalized twice before seeing a pulmonary specialist approximately two months after the completion of the project. The specialist diagnosed Dale with cryptogenic organizing pneumonia, pulmonary fibrosis, and bronchiectasis. The specialist attributed all three of Dale's conditions to his work and completed a workers' compensation

form to that effect. The specialist also opined that Dale had no pre-existing conditions that contributed to his current diagnoses.

Best Environmental, through its insurer, appellant AIG/Chartis Insurance, denied Dale's workers' compensation claim. Dale appealed that denial, which was affirmed by a hearing officer but eventually overturned by an appeals officer. Appellants then sought judicial review of the appeals officer's decision, which was denied. This appeal followed.

On appeal, appellants first argue that the appeals officer failed to consider Dale's alleged pre-existing medical conditions, that the decision relied on inaccurate medical opinions given by doctors who were either unaware of or failed to consider these pre-existing conditions, and that the fact that the other employees on the project did not get sick demonstrates that Dale's condition was not caused by the project. As the appeals officer's resolution of these issues involved issues of fact, we review these determinations to see if they are supported by substantial evidence. *See Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008) (reviewing agency decisions for clear error or an abuse of discretion).

According to appellants, Dale was diagnosed with pneumonia shortly before starting the project, and he also had pre-existing sinus and nasal issues. Regarding the pneumonia argument, this issue was raised before the appeals officer, with Dale asserting that the pneumonia diagnosis was related to the post-project doctor's visit, and that his doctor's visit prior to the project was for allergy-related symptoms. After reviewing the medical records and taking testimony, the appeals officer found that the pre-project visit was for allergy issues, as argued by Dale. This finding is supported by substantial evidence, *see Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087; *Law Offices of Barry Levinson, P.C. v.*

Milko, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008) (defining substantial evidence as that evidence which a reasonable person would find adequate to support the conclusion), and we will not reweigh conflicting evidence to replace the appeals officer's judgment with our own. *Nellis Motors v. State, Dep't of Motor Vehicles*, 124 Nev. 1263, 1269-70, 197 P.3d 1061, 1066 (2008).

Moreover, as Dale points out, appellants' own medical expert found Dale to have no pre-existing conditions related to his current diagnoses, and another doctor stated that there was no evidence of a non-industrial cause for Dale's condition. And while one doctor concluded that Dale's condition was not related to his employment, no doctor concluded that Dale had a relevant pre-existing condition. Thus, the appeals officer's finding that Dale did not have a pre-existing condition is supported by substantial evidence.¹ See *Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087.

Appellants also fail to argue that these doctors did not have all of Dale's medical records (both pre- and post-project) to review when formulating their opinions, leaving us with no basis upon which to conclude that the medical opinions were based on inaccurate or incomplete facts. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not

¹Appellants also argue that Dale's assertion that he began to feel symptoms shortly after finishing the project was not accurate, apparently based on their contention that an onset of symptoms a few days to a week after completion of the project does not constitute "shortly after" the completion of the project. Because appellants cite no authority suggesting that this limited passage of time does not equate to "shortly after" the incident in question, however, we do not consider this argument. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider claims that are not cogently argued or supported by relevant authority).

consider claims that are not cogently argued). Accordingly, the appeals officer did not err in relying on those opinions.

Appellants next argue that the appeals officer erred by not giving any weight to the fact that the other employees had no issues after completion of the project. As Dale points out, however, while appellants' expert opined that Dale's diagnoses were not related to his employment because the other employees did not become ill, another medical expert opined that people have different susceptibilities, and thus, the other employees' lack of symptoms was not evidence that Dale's issues were not caused by the cleaning project. This court will neither reweigh this conflicting evidence nor reassess witness credibility. *See Nellis Motors*, 124 Nev. at 1269-70, 197 P.3d at 1066. Therefore, we will not overturn the appeals officer's explicit decision to not give weight to appellants' expert's opinion in that regard.

Appellants' final argument is that the district court erred as a matter of law by finding that Dale's diagnoses were compensable under both NRS 617.440 (defining when an occupational disease is compensable under workers' compensation) and NRS 617.366 (defining when aggravation of a pre-existing condition is compensable under workers' compensation), because such findings are incongruent.² While the appeals officer did discuss the pre-existing conditions statute, we agree with Dale that the appeals officer's ultimate conclusion was that the statute did not apply as "no physician ha[d] identified any causal connection between [Dale's] pre-existing history . . . and [Dale's] subsequent respiratory

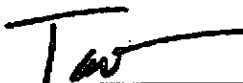
²While appellants also mention that the appeals officer found Dale's condition compensable under NRS 616C.150 (defining when an injury is compensable under workers' compensation), they provide no argument regarding this alleged finding, and therefore, we decline to address it. *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

symptoms” and that there was “no evidence of a non-industrial cause.” Thus, the appeals officer did not commit an error of law in making this determination. *See Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087.

Accordingly, for the reasons discussed above, we affirm the district court’s order denying appellants’ petition for judicial review.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
Jill I. Greiner, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Nevada Attorney for Injured Workers/Carson City
Carson City Clerk