

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM WAUGH,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA, AND WESTCOR
CONSTRUCTION,
Respondents.

No. 36351

FILED

MAR 08 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review and affirming an administrative appeals officer's determination that appellant William Waugh was not entitled to workers' compensation benefits. The appeals officer had previously ruled that Waugh sustained his burden of proving a compensable claim and was therefore entitled to benefits. On a previous petition for judicial review, however, the district court remanded the matter to the appeals officer for further findings of fact and conclusions of law regarding the issue of causation. On remand, the appeals officer reversed her earlier decision and concluded that Waugh had failed to establish that his injury was caused by an industrial accident.

Waugh first contends that in the previous petition for judicial review, the district court exceeded its reviewing authority when it remanded the matter for further findings and conclusions regarding the issue of causation. Specifically, Waugh argues that NRS 233B.135 limits the district court's ability to remand for further findings where there is no evidence in the record regarding an issue. We disagree. We have stated that because a district court may not sit as a fact finder, when there is a lack of sufficient evidence in the record regarding a particular issue, the

proper procedure is to remand to the appeals officer for further factual determination on that issue.¹ Because we agree with the district court's determination that there was a lack of sufficient evidence in the record regarding causation, an essential element in a workers' compensation claim,² we conclude that the district court did not exceed its reviewing authority in remanding the matter to the appeals officer for further factual determinations on this issue.

Waugh next contends that the appeals officer's decision on remand, in which she reversed her earlier decision, is not supported by substantial evidence. The standard of review of an administrative decision, codified in NRS 233B.135, requires that we ascertain whether the appeals officer's decision is supported by substantial evidence,

¹General Motors v. Jackson, 111 Nev. 1026, 1030, 900 P.2d 345, 348 (1995). See also Pida v. State, Dep't of Mtr. Vehicles, 106 Nev. 883, 885, 803 P.2d 229, 230 (1990) (holding that it is proper to remand for taking further evidence when there is a lack of evidence or no record to substantiate the administrative decision); SIIS v. Christensen, 106 Nev. 85, 87-88, 787 P.2d 408, 409-10 (1990) (same).

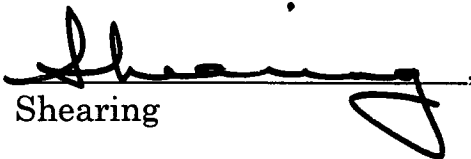
²See Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997). See also Horne v. SIIS, 113 Nev. 532, 537-38, 936 P.2d 839, 842 (1997) (stating that the worker has "the burden of establishing that the claimed disability or condition was in fact caused or contributed by the industrial injury"); United Exposition Service Co. v. SIIS, 109 Nev. 421, 424-25, 851 P.2d 423, 425 (1993) (noting that the worker may not establish causation on speculative testimony but must produce a physician who opines to a degree of reasonable medical probability that the claimed condition was caused by the industrial injury).

evidence that a reasonable mind might accept as adequate to support a conclusion.³

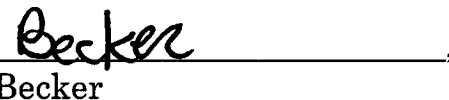
Here, Dr. James Thomas opined, "I do not believe that I can indicate that within medical probability that the incident that caused the herniated disk occurred on Thursday, 10/16/97." Although Dr. John S. Thalgott at the second hearing opined to a reasonable degree of medical probability that the herniated disc was caused by the industrial accident, the appeals officer found this opinion unpersuasive.⁴

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Shearing

 _____, J.
Rose

 _____, J.
Becker

cc: Hon. Stephen L. Huffaker, District Judge
Craig P. Kenny & Associates
Beckett & Yott, Ltd./Carson City
David H. Benavidez
Clark County Clerk

³Horne, 113 Nev. at 537, 936 P.2d at 842.

⁴See id. (noting that the appeals officer weighs the evidence and this court will not substitute its judgment for that of the appeals officer).