

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHERYL THOMAS,  
Appellant,  
vs.  
ELDORADO HOTEL AND CASINO  
AND CDS OF NEVADA,  
Respondents.

No. 36431

FILED

SEP 10 2002

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

ORDER OF AFFIRMANCE

Appellant Cheryl Thomas appeals from a district court order entered on judicial review affirming an appeals officer's determination that Thomas' workers' compensation claim was appropriately closed, without further benefits after her treating physician released her from care.

During July 1997, Thomas was employed by the El Dorado Hotel and Casino as a shuttle bus driver. On July 15, 1997, during the normal course of her transportation duties, Thomas injured her left arm and shoulder. Thomas reported her injury to her supervisor and was referred to Specialty Health Clinic (SHC) for treatment. It was determined that Thomas sustained a compensable industrial injury and that appropriate benefits would be provided.

Thomas received treatment for six weeks and was released for light duty at the El Dorado Hotel and Casino. She asserted she continued to have pain and immobility in her left arm and was referred for additional treatment on August 28 or 29, 1997. However, on the following day, Thomas was surreptitiously videotaped by private investigators hired by the El Dorado's insurance administrator, CDS of Nevada. The videotape was shown to Thomas' treating physician at SHC, Dr. Greenwald, on September 3, 1997. Without further review of Thomas' medical records, Greenwald cancelled all further medical treatment. Dr.

Greenwald then contacted Thomas' employer with his determination she was fully recovered, which resulted in the closure of her claim.

Thomas appealed the determination to the Department of Administration. The hearing officer issued a decision affirming claim closure. Thomas then appealed the decision to the Department of Administration. On April 24, 1998, the appeals officer affirmed the hearing officer's decision. Thomas then appealed to the district court for judicial review but, prior to filing her opening brief, she filed a motion to remand the case to the appeals officer for the purpose of reconsidering evidence related to her injury as performed by her own physician, Dr. Webster. On December 9, 1998, the district court remanded the case to the appeals officer in order for it to consider additional testimony. Following hearings, the appeal officer issued her supplemental decision affirming the hearing officer's decision and upholding the insurer's decision to close Thomas' claim.

Thomas again petitioned the district court for judicial review. On May 30, 2000, the court issued its order denying the petition for judicial review upholding the decisions of the appeal officer. Thomas timely appealed.

Thomas argues that the overwhelming weight of evidence, particularly medical evidence, indicates that she suffered an on-the-job injury resulting in permanent partial disability. Therefore, Thomas contends that the decision of the administrative appeals officer was in error. Specifically, Thomas asserts that the determination of the appeals officer disregarded the findings of physicians who treated and/or evaluated her following her last evaluation by the El Dorado's health clinic and its physician, Dr. Greenwald.

NRS 616C.150 requires that a party seeking workers' compensation coverage for an injury prove by a "preponderance of the evidence that the [ ] injury arose out of and in the course of his employment." "This court's role in reviewing an administrative decision is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion."<sup>1</sup> This court reviews an administrative agency's conclusions of law de novo.<sup>2</sup> Where, however, the agency's conclusions of law are closely related to the agency's view of the facts, the substantial evidence standard applies.<sup>3</sup> Thus, the decision of an administrative agency will be affirmed if there is substantial evidence to support the decision.<sup>4</sup> Substantial evidence is "that which 'a reasonable mind might accept as adequate to support a conclusion.'"<sup>5</sup>

In the present case, substantial evidence was adduced to support both decisions rendered by the appeals officer in this case, and the district court properly denied judicial review. There is no dispute that the

---

<sup>1</sup>United Exposition Service Co. v. SIIS, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993) (citation omitted); see also NRS 233B.135.

<sup>2</sup>SIIS v. Engel, 114 Nev. 1372, 1374, 971 P.2d 793, 795 (1998).

<sup>3</sup>SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993); see also Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986) (agency's conclusions of law are entitled to deference when closely related to agency's view of the facts).

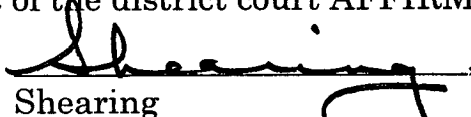
<sup>4</sup>State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 607-08, 729 P.2d 497, 498 (1986).

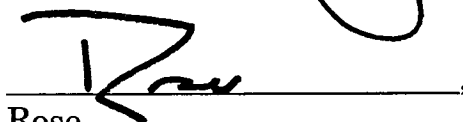
<sup>5</sup>Id. at 608, 729 P.2d at 498 (quoting Richardson v. Perales, 402 U.S. 389 (1971)).

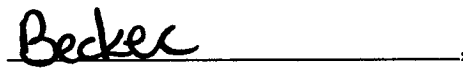
appeals officer relied on the testimony of Dr. Greenwald in rendering its opinions. Dr. Greenwald, an orthopedic surgeon with twenty years of experience, was Thomas' treating physician during the time she was evaluated at SHC. Therefore, he was intimately familiar with her treatment history and, in fact, wrote at least two highly complimentary letters regarding Thomas and her treatment progress at SHC. He testified at both appeals hearings.

We note that Thomas' case was remanded from the district court on Thomas' first petition for judicial review specifically so Thomas could provide evidence regarding her surgery under her physician's care. Thomas' physician, Dr. Webster, was not available to testify, however, the appeals officer allowed the admission of additional documents from Dr. Webster. The appeals officer relied upon the testimony of Dr. Greenwald, giving his testimony more weight than the evidence presented by Thomas. This is within the discretion of the appeals officer and there is substantial evidence to support the decision. Therefore, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Steven R. Kosach, District Judge  
Martin G. Crowley  
McDonald Carano Wilson McCune Bergin Frankovich & Hicks  
LLP/Reno  
Washoe District Court Clerk