

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK OKOEGWALE,

No. 36638

Appellant,

vs.

**FILED**

EMPLOYERS INSURANCE COMPANY OF  
NEVADA, F/K/A STATE INDUSTRIAL  
INSURANCE SYSTEM,

JAN 18 2001

Respondent.

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's petition for judicial review.<sup>1</sup> The district court affirmed an administrative appeals officer's decision that appellant was not entitled to workers' compensation benefits because he failed to prove that his industrial accident caused his headaches. Having reviewed the record, we agree that appellant did not meet his burden of proof.

To obtain compensation, appellant was required by NRS 616C.150(1) to establish by a preponderance of the evidence that his headaches arose out of and in the course of his employment. Although there was conflicting evidence about the exact nature of appellant's February 1997 work-place accident, the appeals officer accepted appellant's version: he fell from his chair when a caster came off, hitting his buttocks on the floor and the right side of his head on a file

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<sup>1</sup>Although appellant has not been granted leave to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents. We deny appellant's request that we appoint counsel to assist him. While the Nevada Attorney for Injured Workers is authorized to represent a claimant in an appeal to this court, the attorney may decline to do so if the appeal appears to be without merit. See NRS 616A.455.

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cabinet. Thereafter, appellant suffered from hip, pelvic and lower back pain, and from headaches. Respondent accepted appellant's claim for injury to his hip, pelvis and lower back, but respondent did not accept appellant's claim for a head injury. Appellant contested the claim denial.

As the appeals officer who decided the contested claim observed, the key issue was whether the evidence would support a finding that the accident caused appellant's headaches. Medical records established that appellant has insulin-dependent diabetes mellitus and hypertension, and that neither condition is well-controlled. Diagnostic testing in April 1997 revealed that appellant has a "one centimeter late subacute lacunar infarct involving the inferior aspect of the left basal ganglia."<sup>2</sup> Respondent's medical advisor, Dr. Villanueva, reported that a lacunar infarct is usually due to vascular insufficiency, as in arteriosclerotic process, or small vessel disease, as in diabetes mellitus, and is not due to trauma. Dr. Villanueva concluded the abnormality was not related to the industrial accident. Dr. Deneau, who conducted an independent medical evaluation based on review of appellant's medical records, reported that vascular infarcts of the basal ganglia do not occur with head trauma, and that appellant's lacunar infarct unquestionably results from arteriosclerotic vascular disease. Dr. Deneau concluded appellant's headaches probably result from his uncontrolled hypertension and diabetes. Two neurologists who examined appellant, Dr. Keene and Dr. Cantrell, could not attribute his headaches to his industrial accident. Because none of the

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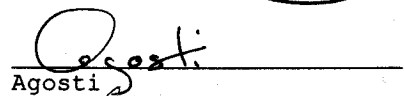
<sup>2</sup>The parties and the appeals officer consulted a medical dictionary to determine that an infarct is a region of dead or dying tissue caused by a sudden obstruction of the blood supply to the area, usually by a clot, and that a lacuna is a tiny depression or small pit, or a gap or defect.

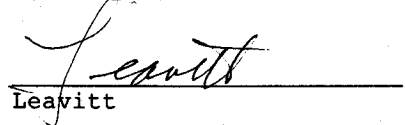
doctors who examined appellant or reviewed his medical records related either appellant's headaches or his lacunar infarct to the industrial accident, the appeals officer concluded appellant failed to establish the requisite causal relationship and affirmed the denial of appellant's claim.

The appeals officer's decision is not affected by any error of law and is supported by substantial evidence; consequently, the district court did not err by denying judicial review and affirming the decision.<sup>3</sup>

Affirmed.

  
Shearing, J.

  
Agosti, J.

  
Leavitt, J.

cc: Hon. James C. Mahan, District Judge  
Carolyn M. Broussard, Employers Insurance Company of  
Nevada, Las Vegas  
Patrick Okoegwale  
Clark County Clerk

<sup>3</sup>See *SIIS v. Shirley*, 109 Nev. 351, 353-54, 849 P.2d 256, 258 (1993) (a reviewing court may not substitute its judgment of the evidence for that of an administrative agency; thus, if substantial evidence and sound legal reasoning support an appeals officer's decision, reviewing courts must sustain it); *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579, 585, 854 P.2d 862, 867 (1993) (credibility determinations are not open to review); NRS 233B.135(3).