

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAVAGE SWEETS, INC.; AND
ADVANTAGE WORKERS'
COMPENSATION INSURANCE,
Appellants,
vs.
ROY JOHNSON,
Respondent.

No. 71397

FILED

DEC 26 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants Savage Sweets, Inc. and Advantage Workers' Compensation Insurance appeal an order denying their petition for judicial review. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Respondent Roy Johnson was driving a hazmat truck filled with crude oil for Savage Sweets when another truck driver cut him off. Johnson stopped just in time to avoid an accident. Johnson claims after the near-accident, the other driver was tailgating him into a gas station. Johnson parked in front of the station while the other driver drove to the back to get in line to fuel his truck. Johnson was walking to the gas station's market to buy a soda when he saw the other driver and walked over to his truck. Johnson testified he wanted to talk to the driver to determine if the driver was impaired or if he presented a terrorist threat because Johnson was driving hazardous materials. Johnson thought the driver might apologize and they would avoid any further problems on the road.

Johnson made eye contact with the driver but the other driver turned away. Johnson yelled "hey" to the other driver, but the other driver's truck engine was on and the windows rolled up. Johnson opened the other driver's door and then the other driver hit Johnson with a lead pipe in the head and arm several times. Johnson's skull was fractured.

Johnson filed a claim for workers' compensation. An Appeals Officer found the claim compensable under NRS 616C.150 as within the course and scope of his employment. Appellants filed a petition for judicial review. The district court determined the Appeals Officer's decision was proper. The trucking company and its industrial insurer filed this appeal.

Appellants argue that the matter was improperly analyzed by the Appeals Officer under *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 183 P.3d 130 (2008), because that case addresses whether an injury arises out of employment. Here, they argue that Johnson left the course and scope of his employment when he approached the other driver to seek an apology. They claim that is not a risk of the job. Respondent answers that he was in the course and scope of his employment because he was under Savage Sweets' control.

"This court 'review[s] an administrative body's decision for clear error or an arbitrary abuse of discretion.'" *Mitchell v. Clark Cty. Sch. Dist.*, 121 Nev. 179, 181, 111 P.3d 1104, 1105 (2005) (quoting *Construction Indus. v. Chalue*, 119 Nev. 348, 352, 74 P.3d 595 597 (2003)). "This court will not disturb an agency's factual findings that are supported by substantial evidence." *Id.* "However, '[q]uestions of law are reviewed de novo.'" *Id.* (quoting *Bullock v. Pinnacle Risk Mgmt.*, 113 Nev. 1385, 1388, 951 P.2d 1036, 1038 (1997)).

“An injured employee . . . [is] not entitled to receive compensation . . . unless the employee . . . establish[es] by a preponderance of the evidence that the employee’s injury arose out of and in the course of his or her employment.” NRS 616C.150(1). “When an employee is required to use the streets and highways to carry out his employment obligations, the risks of those streets and highways are thereby converted to risks of employment.” *Bob Allyn Masonry*, 124 Nev. at 286, 183 P.3d at 130. “If the employee can demonstrate that his injury was occasioned by those risks, his injury will be deemed to have arisen out of the employment.” *Id.* The inquiry does not end there. *Id.* at 286, 183 P.3d at 131. “To determine whether [the claimant] is entitled to obtain workers’ compensation benefits, [the court] must also [] consider[] whether the accident occurred in the course of his employment.” *Id.*

The Nevada Supreme Court has held that an injury arises out of the course and scope of employment if “there is a causal connection between the injury and the employee’s work.” *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997). Additionally, “resolving whether an injury arose out of employment is examined by a totality of the circumstances.” *Id.*¹

The Appeals Officer applied the applicable Nevada law and there was sufficient evidence in the record and in the findings to support the decision under our standard of review. The district court denied judicial review concluding the decision of the Appeals Officer “was not

¹In addition to Nevada law, appellants cite to out-of-state caselaw to counter the Appeals Officer’s decision. The non-Nevada cases are not controlling and none are directly on point in this specific situation.

arbitrary or capricious, clearly erroneous, or affected by other error of law.”

We agree. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Gloria Sturman, District Judge
Lansford W. Levitt, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Clear Counsel Law Group
Eighth District Court Clerk