

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIA ESCOBAR,
Appellant,
vs.
GREEN VALLEY RANCH
CASINO/STATION CASINOS, INC.;
AND YORK RISK SERVICES GROUP,
INC.,
Respondents.

No. 70166

FILED

FEB 10 2017

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Appellant Maria Escobar was injured while working for respondent Green Valley Ranch Casino/Station Casinos, Inc. She filed a workers' compensation claim, which was accepted by Green Valley Ranch's administrator, respondent York Risk Services Group, Inc., for a right knee contusion and sprains/strains of her cervical spine, left shoulder, and left wrist. Escobar received treatment for all of the accepted conditions. Four months after the accident, Dr. Christopher Fisher released Escobar back to full duty work. After that time, the only condition for which she still received treatment was her right knee.

A month and a half after Dr. Fisher released Escobar to full duty work, Dr. James Dettling performed surgery to repair a meniscal tear

in Escobar's knee. Two months after the surgery, Dr. Dettling again released Escobar to full duty work, indicating that she was stable, ratable, and at maximum medical improvement. He also reported that she may have permanent impairment, but he did not specify which of the accepted conditions may have resulted in permanent impairment.

Following Dr. Dettling's report, York sent Escobar to Dr. Sean Hampton for a permanent partial disability (PPD) evaluation for her right knee, left shoulder, and left wrist only. Dr. Hampton rated Escobar at a 2 percent whole person impairment, finding ratable impairments in her right knee and left shoulder, but not her left wrist. Based on this rating, York offered Escobar a 2 percent PPD award, which she appealed to a hearing officer. After her appeal was denied, Escobar requested to be rated by a second physician. She was then referred to Dr. Genie Hults, who rated Escobar at a 33 percent whole person impairment based on impairments to her right knee, left shoulder, left wrist, and cervical spine. Escobar's appeal was then heard by an appeals officer.

The appeals officer found that Dr. Hults had rated Escobar's cervical spine even though there was no evidence of ratable impairment when she was released from care for that body part. The appeals officer also found that it was appropriate for Escobar's right knee to be rated, but that "it defie[d] logic and common sense to conclude that [she] sustained permanent impairment to the other accepted body parts" because her only injuries to those body parts were sprains/strains. Finally, he noted that "no medical provider ha[d] opined that there [was] a likelihood of impairment to those body areas." Based solely on these findings, the

appeals officer concluded that Dr. Hampton, and not Dr. Hults, had followed the appropriate standards and reached the correct conclusions. Thus, the appeals officer affirmed the 2 percent PPD award.

Escobar filed a petition for judicial review, which the district court denied, and this appeal followed. The questions on appeal are whether the appeals officer's findings of fact were supported by substantial evidence in the record and were not clearly erroneous, *see* NRS 233B.135(3)(e); *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013), and whether the appeals officer's decision was arbitrary and capricious, and thus, an abuse of discretion or was otherwise a product of prejudicial legal error. *See* NRS 233B.135(3)(f); *State Tax Comm'n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 385-86, 254 P.3d 601, 603 (2011).

Escobar argues the appeals officer's decision was clearly erroneous and arbitrary and capricious because it was contradicted by evidence in the record and was internally inconsistent. Green Valley Ranch and York argue that the appeals officer properly found that Dr. Hults used improper testing and rating methods and that her opinion was invalid because it resulted in an extremely high award that bore no rational relationship to Escobar's medical history. But the appeals officer did not make the specific findings asserted by Green Valley Ranch and York. Instead, the appeals officer based his decision solely on his own belief that sprains/strains could not result in permanent impairment, the lack of any medical opinion by Escobar's treating physicians specifically finding a likelihood of impairment to the sprained/strained body parts,

and Dr. Hults' inclusion of the cervical spine in the rating. Thus, it is these findings, rather than those asserted by Green Valley Ranch and York, that we review on appeal.

Based on our review of the record and the parties' arguments, we agree with Escobar's assertion that the appeals officer's decision is internally inconsistent. In particular, the purported deficiencies relied on to reject Dr. Hults' report also impacted Dr. Hampton's report, yet the appeals officer referenced these concerns only with regard to Dr. Hults' determinations while concurrently determining that Dr. Hampton had utilized the appropriate standards and reached the correct conclusions. Moreover, as discussed more fully below, certain of the grounds relied on by the appeals officer in making these determinations were not supported by any evidence—much less substantial evidence. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. And while we will not reweigh the evidence or credibility determinations in reviewing an agency decision, *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 342, 302 P.3d 1108, 1118 (2013), because the appeals officer offered no other grounds for his decision on this point, we conclude that the appeals officer's internally inconsistent resolution of this issue was arbitrary and capricious. *See State Tax Comm'n*, 127 Nev. at 385-86, 254 P.3d at 603.

We turn first to the appeals officer's determination that a sprain/strain could not result in a permanent impairment. As noted above, the appeals officer relied on this conclusion to support his rejection of Dr. Hults' report, which rated Escobar at a 33 percent whole person impairment based, in part, on impairments caused by sprains/strains of

Escobar's left shoulder, left wrist, and cervical spine. But Dr. Hampton, whose report and rating the appeals officer adopted, also found a permanent impairment to Escobar's left shoulder resulting from the sprain/strain of that body part—a point that went unmentioned in the appeals officer's evaluation of these reports despite his apparent belief that such injuries could not result in permanent impairment. Thus, in accepting Dr. Hampton's rating of a sprained/strained body part and rejecting Dr. Hults' ratings of sprained/strained body parts, the appeals officer's decision was internally inconsistent.

Moreover, the conclusion that sprains/strains cannot lead to permanent impairment is not supported by any evidence in the record and instead appears to have been based entirely on the appeals officer's subjective views on this issue. Notably, while the appeals officer stated that none of Escobar's treating physicians opined that she may have permanent impairment to the sprained/strained body parts included in Dr. Hults' report, none of her treating physicians specified which body parts may have had permanent impairment at all. Indeed, as noted above, Dr. Dettling, the only treating physician to report that Escobar may have permanent impairment, made only a general finding without specifying which injuries may have caused permanent impairment.

And our review of the record demonstrates both that no doctor stated that Escobar's sprains/strains did not, or could not, result in permanent impairment and that no other evidence to this effect was presented to the appeals officer. We note further that York itself seemingly recognized the possibility that a sprain/strain could cause

permanent impairment, as it specifically requested that Escobar's PPD evaluation rate her impairment resulting from her left wrist and shoulder sprains/strains. Under these circumstances, we cannot conclude that the appeals officer's belief that a sprain/strain could not result in permanent impairment was supported by substantial evidence. *See* NRS 233B.135(4) (defining "substantial evidence" as that "which a reasonable mind might accept as adequate to support a conclusion").

Moving on to the cervical spine issue, one of the grounds relied on to reject Dr. Hulst's report was that she rated Escobar's cervical spine even though there was no evidence of ratable impairment when Escobar was released from care for that body part. But as mentioned above, our review of the record demonstrates that no doctor expressly identified any specific body part as being permanently impaired, including those identified as the basis for Dr. Hampton's rating and award, which the appeals officer ultimately adopted.

As to the cervical spine, when Dr. Fisher released Escobar to full duty work, he noted that she had reported improvement in her cervical spine, but he did not make any findings with regard to whether the cervical spine was completely healed or whether there was any permanent impairment in the cervical spine. He also did not provide any opinion as to whether Escobar had permanent impairment in any other body parts. Similarly, when Dr. Dettling reported that Escobar was stable, ratable, and may have permanent impairment, he did not specify which body parts may have been permanently impaired. Notably, Dr. Dettling only treated Escobar for her right knee injury, which could

arguably indicate that he was only opining that she sustained permanent impairment to her right knee, but Dr. Dettling did not specifically limit his opinion that Escobar was ratable to her knee injury. Thus, nothing in the record demonstrates that, before she was sent to Dr. Hampton for a PPD rating, any of Escobar's treating physicians provided a specific opinion as to which body parts were ratable.

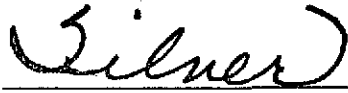
Moreover, while the nature of Escobar's knee injury differed from her other injuries, her cervical spine, left shoulder, and left wrist injuries were all sprains/strains from which she had been released from care several months prior to Dr. Dettling's report opining that she had suffered a ratable injury. Despite these similarities among the cervical spine, left shoulder, and left wrist injuries, York treated the three injuries differently, asking the initial rating physician to rate only Escobar's left shoulder and left wrist, and not her cervical spine. And as noted above, the appeals officer also treated these injuries inconsistently, declaring that sprain/strains, such as Escobar's cervical spine and left wrist injuries, could not cause permanent impairment, while nonetheless adopting Dr. Hampton's report, which found a ratable impairment for Escobar's left shoulder.


As there is nothing in the record demonstrating why Escobar should have been rated for her left shoulder and left wrist,¹ but not for her

¹While Dr. Hampton did not find a ratable impairment of Escobar's left wrist, he nonetheless did rate her impairment of this wrist—giving it a rating of zero.

cervical spine, we conclude that the omission of the cervical spine from the PPD evaluation was arbitrary and capricious. *See State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 88, 787 P.2d 408, 410 (1990) ("An agency ruling without substantial evidentiary support is arbitrary or capricious and therefore unsustainable."). And because the appeals officer's conclusion that Dr. Hampton's report was more reliable than Dr. Hulst's was based solely on findings that were internally inconsistent, lacked substantial evidentiary support, and were arbitrary and capricious, we conclude that the appeals officer's decision constituted an abuse of discretion. *See id.* at 87, 787 P.2d at 409. As a result, we reverse the district court's order denying the petition for judicial review and remand this matter to the district court to grant the petition and remand the matter to the appeals officer for further proceedings consistent with this order.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Rob Bare, District Judge
Carolyn Worrell, Settlement Judge
Behzadi Law Offices
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk