IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CITY OF HENDERSON; AND CCMSI,
Appellants,
vs.
JASON LAW,
Respondent.

No. 83204-COA

FILED

APR 20 2022

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

ORDER OF AFFIRMANCE

The City of Henderson and CCMSI appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

In 2011, Law was employed as a firefighter for the city of Henderson.[1] While at work, Law suffered a left shoulder injury that required him to seek medical attention at the emergency room. After treating Law at the emergency room, doctors recommended that Law be placed on modified or light duty due to the injury until he could see an orthopedic specialist. The next day, the orthopedic specialist recommended that Law remain in a sling, remain on modified duty, and return in two weeks for a follow-up. The City received notification of Law's injury and sent him a written confirmation that he was being placed on temporary modified duty, which made him unable to work overtime shifts. The City's third-party insurance administrator accepted Law's claim for a left rotator cuff tear.

Nearly two months after his injury, Law was released by his doctors from modified duty and returned to regular shift assignments. The

[1]We do not recount the facts except as necessary to our disposition.

day Law returned to regular shift assignments, he also returned to working overtime. When it received notice that Law discharged from all medical care, the City's insurance carrier issued him a claim closure. Over the next four years, however, Law's left shoulder would randomly dislocate. But whenever this would happen, approximately six or seven times in that four-year period, Law was able to readjust his shoulder without medical attention.

But in August 2016, while Law was participating in a firefighters versus police officers football game, his shoulder again dislocated. This time, however, Law was unable to readjust his shoulder without medical help. So, Law went to University Medical Center to have doctors treat the dislocated shoulder. Days later, Law also consulted with an orthopedic surgeon, Dr. Koe. In Dr. Koe's initial consultation with Law, his opinion was that the reoccurring dislocating left shoulder joint was due to an aggravation of his prior work-related injury. Thus, Dr. Koe's recommendation included that his workers' compensation claim be reopened. Law then sent a letter that included Dr. Koe's recommendation to the City's insurance carrier requesting that his claim be reopened. The City's insurer, however, denied Law's request to reopen his claim based on it being untimely under NRS 616C.390(5). Law appealed the insurer's decision, which was affirmed by a hearing officer.

When Law appealed the hearing officer's decision, an appeals officer issued two orders. The first order, which was labeled an "interim order," found that—as a matter of law—Law was not restricted to the one-year reopening rights under NRS 616C.390(5), but instead was entitled to lifetime reopening rights of his claim under NRS 616C.390(1). The appeals officer, however, did find there was a medical question regarding Law's

request to reopen. So, the appeals officer ordered Dr. Koe to make specific findings regarding whether Law's original work injury, from 2011, was the primary cause of the subsequent injury. Dr. Koe's report in response to the appeals officer's order opined that: (1) Law's injury playing football was causally related to his work injury from 2011, (2) the football injury was only an aggravation of the original work-related injury, and (3) the original work-related injury "is the substantial contributing cause for the need for the left shoulder surgery." After receiving Dr. Koe's report and the parties' written closing briefs, the appeals officer reversed the hearing officer's decision, finding that substantial evidence supported Law's request to reopen the claim. The City then filed a petition for judicial review of the appeals officer's decision with the district court, which was denied.

The City now appeals the district court's denial of judicial review, arguing that the appeals officer committed legal error in its interpretation of NRS 616C.390(1), NRS 616C.390(5), and NRS 616C.400(1); and that even if the appeals officer is correct that NRS 616C.390(1) applies to Law's claim, substantial evidence does not support reopening. We disagree.

The central issue in this case is a matter of statutory interpretation, which we review de novo. *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). The City argues that Law cannot reopen his workers' compensation claim under NRS 616C.390(1) because, while he was on modified duty, he was still able to earn his full wages. Thus, it is the City's position that Law does not meet the minimum duration of incapacity for lifetime reopening rights. Law asserts the City's interpretation of the statute is incorrect. It is Law's position that his claim meets the minimum duration of incapacity for lifetime reopening rights

because he: (1) regularly worked overtime prior to his work-related injury, (2) was unable to work overtime while on modified duty, and (3) was therefore prevented from earning his full wages while on modified duty. We agree with Law.

NRS 616C.390(1) states that an insurer must reopen a claim more than one year after its closure if:

> (a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;
>
> (b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and
>
> (c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation.

In contrast, NRS 616C.390(5) restricts an application to reopen a claim to one-year after the claim's closure. These types of requests, however, must be made in writing, within one year after the date on which the claim was closed. Under NRS 616C.390(5), reopening may take place when: (a) the claimant did not meet the minimum duration of incapacity as a result of the injury; and (b) the claimant did not receive benefits for a permanent partial disability. For purposes of NRS 616C.390(5), "minimum duration of incapacity" is defined by NRS 616C.400(1), which states:

> Temporary compensation benefits must not be paid under chapters 616A to 616D, inclusive, of NRS for an injury which does not incapacitate the employee for at least 5 consecutive days, or 5 cumulative days within a 20-day period, from earning full wages, but if the incapacity extends for 5 or more consecutive days, or 5 cumulative days within a 20-day period, compensation must then be computed from the date of the injury.

Thus, interpreting these statutes together, if the employee meets the minimum duration of incapacity, as defined by NRS 616C.400(1), then it logically follows that he is entitled to the lifetime reopening rights under NRS 616C.390(1), instead of the more restrictive one-year reopening rights under NRS 616C.390(5).

The Nevada Supreme Court recently interpreted that the term "full wages," within the context of NRS 616C.400(1), includes overtime pay. *City of Henderson v. Wolfgram*, 137 Nev., Adv. Op. 79, 501 P.3d 422, 425 (2021) ("We conclude that the Legislature intended that 'full wages' as used in NRS 616C.400(1) may include payments for overtime."). Thus, if an employee suffers a workplace injury that makes him unable to earn full wages, including overtime, for five consecutive day or five cumulative days in a twenty-day period, he is entitled to lifetime reopening rights under NRS 616C.390(1). *See* NRS 616C.390(5); NRS 616C.400(1); *Wolfgram*, 137 Nev., Adv. Op. 79, 501 P.3d at 425. That is exactly what happened to Law.

The record here demonstrates that Law was placed on modified duty for a period of two-months. During that time, Law was unable to work a single hour of overtime, thereby making him unable to earn his full wages for five or more consecutive days. Thus, because the appeals officer's interpretation of NRS 616C.390(1) was correct, we affirm the district court's decision to deny the City's petition for judicial review.

The City also argues that, even if he is entitled to lifetime reopening rights under NRS 616C.390(1), Law has not met his burden to prove reopening. We disagree.

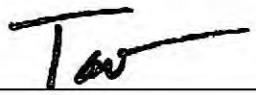
We review an administrative agency decision "for clear error or an arbitrary and capricious abuse of discretion" and defer to an agency's findings of fact and "fact-based conclusions of law . . . if they are supported

by substantial evidence." *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (citation and internal quotation marks omitted). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion . . . ." *Id.* at 362, 184 P.3d at 384; *see also* NRS 233B.135(3)-(4) (defining substantial evidence and discussing judicial review of agency decisions).

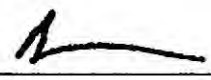
In the present case, the appeals officer relied on personal testimony from Law and the expert opinion of Dr. Koe. In doing so, the appeals officer determined that both Law and Dr. Koe were credible witnesses and that their testimony supported reopening Law's claim. Because this court does not reweigh the evidence presented to the appeals officer, but instead defers to its factual findings, we cannot conclude that the appeals officer's decision was arbitrary or capricious, because it was supported by substantial evidence. *See* NRS 233B.135(3)-(4).

Accordingly, we ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao



_____, J.
Bulla

cc: Hon. Christy L. Craig, District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Greenman Goldberg Raby & Martinez
Eighth District Court Clerk