

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY  
OF NEVADA, A MUTUAL COMPANY,  
Appellant,  
vs.  
LUCIA MATUTE,  
Respondent.

No. 37923

**FILED**

APR 08 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a worker's compensation case. While stacking trusses at work, Pedro Matute fell approximately fifteen feet to his death. A toxicology report showed that at the time of Matute's death, his blood had a .20 concentration of alcohol, a 6.7 nanograms per milliliter (NG/ML) concentration of marijuana, and a 105 NG/ML of marijuana metabolite. Based on the toxicology report, Employers Insurance Company of Nevada (EICON) denied Matute's widow's (Lucia) death benefits claim pursuant to NRS 616.230C(1)(c) and (d).<sup>1</sup>

Lucia requested a hearing and the hearing officer overturned EICON's denial because the hearing officer determined that neither the intoxication nor the use of a controlled substance caused Matute's death.

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<sup>1</sup>NRS 616C.230(1)(c) and (d) state that an employee may not receive workers' compensation if the employee's injury is caused by his intoxication or use of a controlled substance. NRS 616C.230(1)(c) and (d) also provide that if an employee is intoxicated or has a controlled substance in his system at the time of his injury, the intoxication or the controlled substance must be presumed to be the proximate cause of the injury.

An appeals officer affirmed the hearing officer's determination. The appeals officer held that "[t]he preponderance of the evidence presented would fail to establish that . . . Matute was intoxicated . . . or that any alcohol or controlled substance contributed to or caused him to fall off the roof resulting in his demise."<sup>2</sup> The appeals officer also held that Lucia rebutted the presumptions contained in NRS 616C.230. The district court denied EICON's petition for judicial review. This appeal ensued.

In reviewing an administrative agency's decision, this court examines the evidence that was before the agency to determine whether the agency's decision was arbitrary and capricious, and therefore, an abuse of discretion.<sup>3</sup> This review is limited to a determination of whether the appeals officer's decision is based on substantial evidence or contains an error of law.<sup>4</sup> "Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion."<sup>5</sup> Under NRS 616.230C(1)(c) and (d), death benefits are not payable for an injury proximately caused by an employee's intoxication or use of a controlled substance. If the insurer proves that the claimant was intoxicated or had a controlled substance in his system at the time of his injury, a

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<sup>2</sup>Substantial evidence does not support the appeals officer's decision that Matute was not intoxicated at his death. However, this is inconsequential since we find that substantial evidence supports the appeals officer's finding that neither the alcohol nor the drugs proximately caused Matute's death.

<sup>3</sup>SIIS v. Montoya, 109 Nev. 1029, 1031, 862 P.2d 1197, 1199 (1993); see also NRS 233B.135(3).

<sup>4</sup>SIIS v. Romero, 110 Nev. 739, 742, 877 P.2d 541, 542 (1994); see also NRS 233B.135(3).

<sup>5</sup>Montoya, 109 Nev. at 1032, 862 P.2d at 1199.

presumption arises that the intoxication or controlled substance proximately caused the claimant's injury.<sup>6</sup> However, the claimant may offer evidence to rebut this presumption.<sup>7</sup>

During the hearing in front of the appeals officer, Robert Dillon, a project supervisor, testified that he did not observe the accident and did not know exactly what happened, but that the employees speculated that trusses rolled over and pushed Matute off the wall. Additionally, there was a witness statement and another document submitted to the appeals officer indicating that it takes four employees to safely perform the job that Matute was doing at the time of his death. However, at the time of Matute's death, only he and one other employee were performing this job. EICON also submitted evidence that the Department of Business and Industry's Occupational Safety and Health Enforcement Section (OSHES) cited and penalized Matute's employer for several violations in conjunction with Matute's death, including a violation for not properly training its employees.<sup>8</sup>

Also, Matute's employer's initial accident report form stated that Matute died while "[s]preading trusses and one got stuck, pulled the stuck one really hard and about five trusses rolled over and pushed him off the wall. Nobody witnessed how he landed on the ground." All of this evidence suggests that at the time of Matute's death, he was performing a hazardous job, for which he was not properly trained, under unsafe

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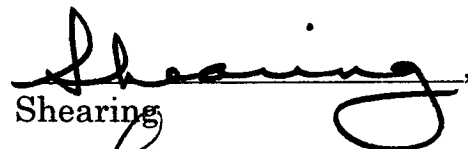
<sup>6</sup>NRS 616C.230(1)(c) & (d).


<sup>7</sup>Id.


<sup>8</sup>OSHES did not, however, find Matute's employer liable for his death.

conditions. The record contains evidence that a reasonable person might accept as adequate to support a conclusion that Lucia rebutted the presumption that intoxication or a controlled substance proximately caused Matute's death. Thus, the appeals officer's decision is supported by substantial evidence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Valorie Vega, District Judge  
Beckett & Yott, Ltd./Carson City  
Clark & Richards  
Clark County Clerk