


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ON DEMAND SEDAN; PTSIG; AND
SEDGWICK CMS,
Appellants,
vs.
LAZARO VALDES (DECEASED),
MARIA BON-ALVAREZ, SURVIVING
SPOUSE,
Respondents.

No. 84586-COA

FILED

APR 20 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

On Demand Sedan Services, Inc., Preferred Transportation Self-Insured Group (PTSIG), and York Risk Services Group, Inc. (acquired by Sedgwick CMS), appeal from a district court order denying their petition for judicial review. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

While driving a limousine for On Demand Sedan Services, Lazaro Valdes was involved in a motor vehicle accident in which he sustained serious injuries.¹ He was transported to a hospital and diagnosed with traumatic brain injury, aortic dissection, liver and spleen lacerations, kidney infarction, and rib fractures. Doctors attempted to operate to repair the aortic dissection, but Valdes did not survive. Paperwork followed, including an Employee's Claim for Compensation/Report of Initial Treatment (Form C-3) completed on behalf of Valdes at the hospital, a fatality report prepared by On Demand Sedan Services, and a police traffic accident report that was completed shortly after the accident.

¹We recount the facts only as necessary for our disposition.

The documents were inconsistent about the cause of the accident. While On Demand Sedan Services' fatality report stated that the accident was caused when "[o]ur driver was cut off by a white truck and we swerved to avoid accident," the police traffic accident report included no information indicating that Valdes was, in fact, cut off. The police traffic accident report indicated that Valdes lost control of the car he was driving, crossed the median, and drove headfirst into oncoming traffic. Form C-3 stated that Valdes lost control of the car while trying to avoid an accident. Additionally, one witness told the reporting police officer that he saw Valdes slumped over the steering wheel in the car as he crossed the median.

The coroner performed a postmortem examination of Valdes's body and prepared an autopsy report that included toxicology results revealing the presence of methamphetamine, amphetamine, and THC in Valdes's blood.² The coroner opined that the cause of death was "multiple blunt force injuries due to motor vehicle collision," and that "[o]ther significant contributing conditions include[ed] aortic dissection and methamphetamine intoxication."

Valdes's spouse, Maria Bon-Alvarez, submitted a timely claim for spousal survivor death benefits pursuant to NRS 616C.505.³ The claim

²The toxicology results showed 0.53 nanograms per milliliter of Delta 9 THC found in Valdes's body. The reporting limit requiring NMS labs to report a positive THC result was 0.50 nanograms per milliliter. However, Valdes's THC levels were below the legal limit for operating a motor vehicle in Nevada, and the THC found in Valdes's system was not raised as a basis for claim denial as a prohibited controlled substance on appeal to this court.

³NRS 616C.505 permits death benefit compensation when "an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer."

was submitted to York Risk Services Group, Inc., the third-party administrator for the insurer, PTSIG. York denied Maria's claim pending further investigation. Maria appealed this initial denial to a hearing officer, but the hearing officer never heard that appeal. After receiving the toxicology report and further investigation, York issued a denial of Maria's claim based on Valdes's toxicology results. Maria again appealed York's denial of her claim to a hearing officer. The parties agreed to bypass a hearing officer on both appeals and the two appeals were consolidated and brought directly before an appeals officer.

During the hearing before the appeals officer, Maria offered her own testimony and the testimony of an expert forensic toxicologist, Dr. Raymond Kelly. Dr. Kelly testified that he did not agree with the medical examiner's opinion that methamphetamine intoxication significantly contributed to Valdes's death.⁴ Dr. Kelly also concluded that there was insufficient evidence to show that there was any impairment based on the lack of a description of bad driving before the collision and his belief that the nature of the event may have made it difficult for the investigating officers to piece together how the accident transpired. Lastly, Dr. Kelly testified that the findings of the NMS Lab report did not support or rebut Valdes's impairment or non-impairment because it reported levels that were not drug levels, meaning they were "just levels of normal body constituents . . . nothing that's out of the normal range in terms of these

⁴Dr. Kelly stated he usually prefers using the term "impairment" rather than "intoxication" and he questioned the medical examiner's conclusion that there was methamphetamine intoxication considering the lack of signs and symptoms supporting that conclusion besides the presence of drugs in the blood at fairly low levels.

substances tested for.” Maria also testified at the hearing before the appeals officer. She testified Valdes missed work the day before the fatal accident because he was sick and took over-the-counter medications for his symptoms.

The appeals officer affirmed the denial of compensation for Maria’s claim, finding that she “failed to prove, by a preponderance of the evidence, that the controlled substances in [Valdes’s] system were not the proximate cause of his death.” The appeals officer concluded that the totality of the circumstances based on the evidence and testimony presented did not overcome the presumption that Valdes’s accident was not industrially related due to illicit drug use.

Maria filed a petition for judicial review of the appeals officer’s decision and order in the district court and argued that the methamphetamine found in Valdes’s blood was not sufficiently shown to have derived from a controlled substance. The district court found that “the underlying record on appeal does not contain substantial evidence to support the Appeals Officer’s finding that the methamphetamine chemical variant found in the Decedent[s] body, is a ‘controlled substance’ for purposes of denying [Maria’s] industrial spousal death benefit claim.” The court also found that the appeals officer’s conclusion was made “without evidentiary support in the record” and “notwithstanding there exists a legal over-the-counter, commercially available, chemical variant of methamphetamine that was not tested for by the Coroner, nor any other party.” The district court remanded the matter to the appeals officer to ascertain if NRS 616C.230(1)(d) is applicable to Maria’s claim and directed the appeals officer to determine if any factual and legal bases existed as to whether the methamphetamine chemical variant found in Valdes’s body was a controlled substance for purposes of NRS 616C.230(1)(d).

The appeals officer on remand issued an interim order directing York to request NMS labs to differentiate the isomers of the methamphetamine found in Valdes's body so that the appeals officer could determine whether the methamphetamine chemical variant was a controlled substance or was the exempted form found in legal over-the-counter medications. NMS Labs informed York that it did not have any additional samples from Valdes to test and, therefore, could not provide the test results that the appeals officer requested.

The appeals officer then issued a supplemental decision and order reversing York's denial of liability for Maria's claim and concluding that Maria was entitled to industrial spousal death benefits under NRS 616C.505. The supplemental decision and order concluded the following: (1) that Maria overcame the presumption that controlled substances were a contributing cause of her husband's industrial accident and death by clear and convincing evidence; (2) that the manifest weight of the evidence indicated that Valdes most likely lost control of his vehicle during an evasive maneuver and faced an increased risk of injury under the street-risk rule;⁵ (3) that under Nevada's no fault based workers' compensation laws,⁶ the negligence or fault of Valdes had no bearing on the compensability of Maria's

⁵The "actual street-risk rule" was adopted by the Nevada Supreme Court in *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 183 P.3d 126 (2008). Under this rule, "an injury is compensable so long as (1) the employee's duties require a presence upon the public streets, and (2) the injury arose from an actual risk of that presence upon the streets." *Id.* at 285, 183 P.3d at 130 (internal quotation marks omitted).

⁶*See Valdez v. Employers Ins. Co. of Nev.*, 123 Nev. 170, 174, 162 P.3d 148, 151 (2007) (recognizing the "no-fault based workers' compensation" laws that have been in force in Nevada since 1911).

claim; and finally, (4) that under the “mixed-risk” analysis as set forth in *Baiguen*⁷, although there may have been multiple causes that contributed to Valdes losing control of his vehicle and crashing it, Valdes’s workplace conditions contributed to his accident and death and controlled substances did not play a role in the accident. The supplemental decision and order required PTSIG, by way of York, to initiate the spousal death benefit payments to Maria as accrued from the date of Valdes’s death plus statutory interest and all retroactive benefits owed.

On Demand Sedan Services, PTSIG, and York (collectively On Demand) appealed the reversal by filing a petition for judicial review, which was denied by the district court. The district court found that the appeals officer correctly applied the actual street-risk and mixed-risk doctrines to the facts of the case. The district court also found that On Demand never showed if the chemical variant of methamphetamine found in Valdes’s body was legal or illegal, so NRS 616C.230 was not triggered, and Maria did not need to rebut a presumption that Valdes was under the influence of a controlled substance during his accident. This appeal followed.

On appeal, On Demand argues that the appeals officer’s supplemental decision and order is unsupported by substantial evidence, and therefore the district court’s order of denial of judicial review should be reversed. We disagree.

⁷See *Baiguen v. Harrah’s Las Vegas, LLC*, 134 Nev. 597, 426 P.3d 586 (2018). In *Baiguen*, the Nevada Supreme Court stated that under some circumstances a risk can be mixed, meaning that the risk “is ‘a personal cause and an employment cause combin[ing] to produce the harm.’” *Id.* at 601, 426 P.3d at 591 (citing 1 Arthur Larson and Lex K. Larson, *Larson’s Workers’ Compensation Law* § 4.04, at 4-3 (rev. ed. 2017)).

An administrative decision is reviewed for substantial evidence under an abuse of discretion standard. *Nellis Motors v. Dep't of Motor Vehicles*, 124 Nev. 1263, 1269, 197 P.3d 1061, 1066 (2008). "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion." *Id.* (internal quotation marks omitted). An abuse of discretion occurs when an administrative agency's decision is arbitrary or capricious. *Weaver v. Dep't of Motor Vehicles*, 121 Nev. 494, 498, 117 P.3d 193, 196 (2005). Review of an administrative decision does not include reweighing evidence or reassessing a witness's credibility. *Id.*

On Demand argues that Maria failed to rebut the presumption raised by NRS 616C.230(1)(d) because she did not prove that the methamphetamine chemical variant found in Valdes's blood came from an over-the-counter medication by clear and convincing evidence. On Demand also challenges several of Dr. Kelly's statements and opinions. Lastly, On Demand contends that Maria failed to show that Valdes's accident arose out of and in the course of his employment and that the street-risk doctrine and the mixed-risk test are inapplicable to this case.

Maria responds that On Demand has merely raised the same arguments that they included in their petition for judicial review to the district court. Maria states that it was On Demand's burden to first prove that Valdes had a controlled substance in his system for NRS 616C.230's presumption to apply. Maria contends that because On Demand failed to demonstrate that the substance in Valdes's body was in fact the illegal chemical variant of methamphetamine rather than the legal variant, she did not hold the burden to rebut any findings regarding the methamphetamine variant. Maria lastly responds that Valdes was performing work duties, thus

both the street-risk doctrine and the mixed-risk test were properly applied in this case and Valdes's fault has no bearing on her claim.

Regarding On Demand's argument that Maria failed to rebut NRS 616C.230's presumption, the appeals officer did not err when it determined that there was insufficient evidence to apply the presumption. In cases where there is a lack of evidence to raise a presumption favoring claim denial, the lack of evidence can qualify as the basis for an appeals officer's determination. *See Bullock v. Pinnacle Risk Mgmt.*, 113 Nev. 1385, 1390, 951 P.2d 1036, 1039 (1997) (noting that the appeals officer's determination was based on a lack of evidence). Since NMS Labs no longer had any of Valdes's testing samples, it could not differentiate the isomer of methamphetamine found in Valdes's blood and could not carry out the testing that the appeals officer ordered. Without these test results, the appeals officer could reasonably find that it did not have a sufficient evidentiary basis to conclude that the methamphetamine variant found in Valdes's blood was a controlled or prohibited substance. As the district court correctly noted when denying On Demand's petition for judicial review, NRS 616C.230 requires an employer to "first demonstrate a particular controlled substance is found in the Claimant, and only thereafter the Claimant must show that he/she was not intoxicated." Since On Demand never demonstrated that Valdes's blood contained an illegal variant of methamphetamine which constituted a controlled or prohibited substance, NRS 616C.230's presumption does not apply, and Maria did not hold a burden to rebut the presumption.

Additionally, On Demand's challenges to Dr. Kelly's testimony are unpersuasive because this court does not reassess the credibility of a witness on appeal. *See Nellis Motors*, 124 Nev. at 1269-70, 197 P.3d at 1066

(explaining that review of an administrative agency's decision will not include reassessing witness credibility, nor reweighing evidence). The appeals officer's decision and order found that Dr. Kelly credibly testified that the amount of methamphetamine found in Valdes's body was insufficient to cause intoxication or impaired driving and credibly testified that the amphetamine found in Valdes's body was likely to be nothing more than the biological metabolite of methamphetamine. On Demand challenges this testimony by pointing to eyewitness statements indicating that Valdes was driving erratically and was slumped over the steering wheel before the vehicle collision. However, the appeals officer acted within his discretion when he evaluated and weighed the eyewitness reports and determined that they did not demonstrate that Valdes was under the influence of a controlled substance at the time of the accident. We decline to reassess Dr. Kelly's credibility or reweigh the evidence on appeal and will not reverse the appeals officer's findings because they are supported by substantial evidence. See *Weaver*, 121 Nev. at 498, 117 P.3d at 196.

Lastly, On Demand argues that the street-risk doctrine and the mixed-risk test should not apply to this case because the eyewitness reports of the accident indicate that Valdes likely suffered a medical episode (aortic dissection) or was driving while impaired. On Demand argues that the medical episode or impairment, which was solely due to Valdes's personal health, was the cause of the accident, not Valdes's employment activities. The appeals officer did not abuse his discretion when he determined that Valdes's use of the streets and highway contributed to his accident and death. Valdes's medical records showed he suffered an aortic dissection, but there was no conclusive evidence showing at what point the dissection occurred. Dr. Kelly also could not opine as to whether the dissection occurred before,

during, or after the vehicle collision and On Demand did not present any expert evidence regarding timing or causation.

Even if the aortic dissection contributed to Valdes's accident, the appeals officer reasonably found that the workplace conditions also contributed to the accident and to Valdes's death. We note that the traffic accident report, authored by On Demand, states that Valdes was "cut off by a white truck" and "swerved to avoid accident." As the appeals officer explained, "it would be purely speculative to conclude that the aortic dissection was the proximate cause of the accident." We therefore conclude that substantial evidence exists that the street-risk doctrine and the mixed risk test were applicable and properly applied. *See Bob Allyn Masonry*, 124 Nev. at 285, 183 P.3d at 130 (holding that the actual street-risk rule deems any injury compensable so long as the employee's duties require presence upon public streets and the injury arose from an actual risk of that presence on the streets) and *Baiguen*, 134 Nev. at 601, 426 P.3d at 591 (holding that "under some circumstances, a risk may be mixed when a personal cause and an employment cause combine to cause the injury and where the employment risk was a contributing factor to the injury"). Therefore, Maria's claim is not precluded because Valdes's employment risks were a contributing cause of his accident and death.⁸

⁸As to On Demand's argument that Maria failed to demonstrate that her husband's accident arose out of and in the course and scope of his employment, the appeals officer found that "[i]t is uncontested by the parties" that Valdes was working within the course and scope of his employment the time of the accident. Additionally, the record indicates that Valdes was driving his employer's limousine at the time of the accident, Maria testified that her husband would leave for work at 6:00 in the morning, and the accident occurred at approximately 7:02 a.m., according to the fatality report.

Accordingly, we ORDER the judgment of the district court
AFFIRMED.⁹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Janet Trost, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
The State of Nevada Department of Administration, Hearings Division
GGRM Law Firm
Eighth District Court Clerk

On Demand did not present any evidence to rebut these facts demonstrating that Valdes was within the course and scope of his employment when the accident occurred, therefore Maria has a compensable claim under NRS 616C.150.

⁹Insofar as the parties have raised any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.