


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; AND CANNON
COCHRAN MANAGEMENT SERVICES,
INC.,
Appellants,
vs.
JOSEPH GIANNONE,
Respondent.

No. 84500-COA

FILED

MAY 18 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF REVERSAL

Las Vegas Metropolitan Police Department (LVMPD) appeals from a district court order granting a petition for judicial review and reversing an appeals officer's decision and order in a workers' compensation matter. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Joseph Giannone was a police officer employed by LVMPD as a detective.¹ In January 2017, Giannone was searching for an armed suspect inside of a house. When Giannone entered the house, the suspect fled and eventually held a family hostage for several hours. The family was unharmed. It is unclear from the record what happened to the suspect or what additional role Giannone played in the incident.

During a debrief following the January 2017 incident, Giannone's supervisor called him a coward in front of multiple other officers for not shooting the suspect in the house. Giannone reported that he was bullied by his superiors after the debrief and that he was also attacked on social media by his fellow officers. He was then placed on desk duty before being placed on leave under the Family Medical Leave Act.

¹We recount facts only as necessary for our disposition.

In late February 2017, Giannone was seen by Dr. Farid and filled out a C-4 form where Giannone reported that he had a “stress disorder and anxiety caused by the management and coworkers” attempting to bully him and “personal attacks by management.” Giannone also reported that he filled out the form several days after the incident. Shortly after completing the C-4 form, Giannone filled out an occupational injury/illness/exposure report. Both in this report and to Dr. Farid he stated that he was in debrief when the injury occurred and reported that the injury was stress caused by bullying and belittling from his superiors.²

In March 2017, Giannone’s workers’ compensation claim for severe anxiety/stress was denied because the insurer determined that his claim did not meet the requirements of NRS Chapters 616 and 617.³ Subsequently in March 2017, Giannone was treated by a psychologist, Dr. Suba. Dr. Suba stated in his initial evaluation that Giannone reported feeling very anxious and stressed after the January 2017 incident. This was

²We note that this form provides examples of what activities might cause an employee to fill out this form and chasing a suspect is listed as an example. Nevertheless, Giannone did not identify the chase as the cause of his condition.

³The insurer specifically relied on NRS 616A.030, defining “accident”; NRS 616A.265, defining “injury”; NRS 616C.010 (2017), *amended by* 2021 Nev. Stat. ch. 322 §8, at 1928-9, setting forth reporting requirements; NRS 616C.150, setting forth the burden of proof for the claimant; NRS 616C.180 (2017), *amended by* 2021 Nev. Stat., ch. 312 § 2, at 1901-2, explaining the requirements to receive compensation for an injury or disease caused by stress; NRS 617.358, requiring that claimant prove that the disease arose out of the conditions of employment; and NRS 617.440, defining “occupational disease.”

The parties and appeals officer used the statutes as they existed at the time of the incident and so do we.

the first time that a doctor or Giannone tied the January 2017 chase incident to Giannone's workers' compensation claim. Dr. Suba diagnosed Giannone with major depressive disorder, generalized anxiety disorder, and post-traumatic stress disorder but he did not specifically state that the chase incident primarily caused any of these conditions.

Giannone appealed the denial to a hearing officer. The hearing officer affirmed the decision of the insurance provider. Giannone then appealed the decision to an appeals officer. The appeals officer affirmed the hearing officer's decision. Giannone then filed a petition for judicial review. The district court granted the petition and found that the appeals officer's findings of fact were not adequate to support the decision and order, so it reversed and remanded the matter to the appeals officer to make the necessary findings.

On remand, the appeals officer again affirmed the hearing officer's decision. The appeals officer found that Giannone failed to meet his burden under NRS 616C.180(3) by failing to establish that his stress injury was caused by his job. The appeals officer also concluded that Giannone's injury arose during a disciplinary proceeding which barred him from receiving workers' compensation under NRS 616C.180(3)(c). Giannone filed another petition for judicial review. The district court granted Giannone's petition for judicial review, reversed the appeals officer's order, and ordered the insurer to accept liability for Giannone's claim because the appeals officer's order was not based on substantial evidence. LVMPD appeals that decision.

On appeal, LVMPD argues that substantial evidence supports the appeals officer's decision and order, so the district court improperly reversed the decision and order. We agree.

On appeals from orders deciding petitions for judicial review, this court reviews an agency's factual decisions for clear error or an abuse of discretion and will not overturn them if they are supported by substantial evidence. *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 248, 327 P.3d 487, 489 (2014). "Substantial evidence is evidence that a reasonable mind could accept as adequately supporting the agency's conclusions." *Id.* This court reviews legal issues de novo. *Id.*

LVMPD argues that per NRS 616C.180 Giannone had to prove that his injury occurred during the course of his employment, which he failed to do. LVMPD further argues that substantial evidence supports the appeals officer's decision, so the district court erred when it reversed the appeals officer's order. Giannone responds that he met his burden of proof and that the appeals officer's order was not supported by substantial evidence.

In order to succeed on his claim, Giannone needed to prove by clear and convincing evidence that he had "a mental injury caused by extreme stress in time of danger," that "[t]he primary cause of the injury was an event that arose out of and during the course of his . . . employment," and that "[t]he stress was not caused by . . . any disciplinary action taken against him." NRS 616C.180(3)(a)-(c) (2017), *amended by* 2019 Nev. Stat., ch. 312 § 2, at 1901-2. Additionally, a workers' compensation claimant is required "to identify a discrete event in time of danger as the cause of the claimant's stress-related injury." *McGrath v. State Dep't of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007). Clear and convincing evidence must be "so strong and cogent as to satisfy the mind and conscience of a common [person]" and "[i]t need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a

legitimate inference . . . may be drawn.” *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (quoting *Gruber v. Baker*, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

Giannone initially claimed that his injury occurred as a result of bullying by his superior officers in front of his coworkers. On his C-4 form, he stated that the date of the injury was February 23, 2017, and that he delayed reporting the injury until four days later. On his occupational injury/exposure report, which he signed in March 2017, he again reported that his injury occurred because of “belittling and bullying” on February 23, 2017. On this form he also reported that the injury occurred in a debrief. It was not until after his claim was denied that the cause of his injury was identified as the January 2017 incident by Dr. Suba in March 2017. However, even when Dr. Suba evaluated Giannone, Dr. Suba still identified the debrief and subsequent bullying as a source of anxiety and noted that Giannone no longer felt trusted by his peers. Dr. Suba saw Giannone again in April 2017 and reported that Giannone had difficulty seeing police cars or police officers because he believed that officers were talking about him, which caused him “intense anxiety and fear.” Dr. Suba also stated that Giannone thought about the January 2017 incident a lot.

The appeals officer considered Giannone’s self-reporting as well as the reports from Dr. Suba and concluded that Giannone’s complaints arose from the debrief, not from the January 2017 incident itself. This court does not reweigh the evidence on appeal. *See Law Offices of Barry Levinson v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (stating that this court does not reweigh evidence or revisit an appeals officer’s credibility determinations on appeal and may not reweigh evidence when an agency’s conclusions of law are supported by substantial evidence). Substantial

evidence supports the appeals officer's order. Both forms completed by Giannone identify the bullying at the debrief as the cause of his injury, even when the forms provided chasing a suspect as an example of a cause of injury. Additionally, while Dr. Suba did eventually identify the January 2017 chase incident as the source of injury, he also appeared to treat the bullying Giannone experienced as a separate source of injury and did not identify a primary source. Dr. Suba's analysis suggests that there was not one discrete event that was the primary cause of Giannone's injury, which is required for a claimant to successfully receive compensation for a stress-related injury. *See McGrath*, 123 Nev. at 123, 159 P.3d at 241.

The appeals officer concluded that Giannone failed to meet the requirements of NRS 616C.180 because he failed to prove by clear and convincing evidence that his injury arose out of a time of stress or danger because he repeatedly reported that his injury occurred during a debrief because he was bullied by his superiors. The appeals officer also concluded that this injury occurred during a disciplinary event. Substantial evidence supports both conclusions.⁴

⁴We note that stress caused by a disciplinary action cannot be the source of a workers' compensation claim. *See* NRS 616C.180(3)(c) (2017), *amended by* 2021 Nev. Stat., ch. 312 § 2, at 1901-2. While the appeals officer concluded that the debrief was a disciplinary proceeding and that this was the source of Giannone's complaint, this issue was not addressed on appeal and accordingly is waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived); *but see Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1258, 1289 (Ct. App. 2022) (holding that when a district court provides independent and alternative grounds to support its ruling the appellant must properly challenge all of the grounds otherwise the ruling will be affirmed).

Accordingly, we

ORDER the judgment of the district court REVERSED.⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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

⁵Insofar as the parties have raised 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.