IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ETHAN STEELE,
Appellant,
vs.
TRYKE COMPANIES SO NV, LLC; AND BENCHMARK ADMINISTRATORS,
Respondents.

No. 84738-COA

FILED

OCT 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ethan Steele appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Steele suffered an allergic reaction during his employment for respondent Tryke Companies So NV, LLC (Tryke) as a lab technician working with cannabis material. The reaction caused Steele to break out in a rash and suffer shortness of breath. Steele visited a medical provider and, in completing the C-4 form related to his allergic reaction, the treating provider noted no connection between Steele's condition and his employment. Steele subsequently underwent allergen testing. The testing revealed that Steele was allergic to dog dander and a type of mold, alternaria alternata.

Steele subsequently visited several medical providers for treatment. One provider, Dr. Herman, noted that Steele's symptoms may have been related to seasonal change or worsened by seasonal allergies, and

that his condition may be related to indoor mold. Dr. Herman also wrote a letter that stated "[b]y history [Steele's] exposure occurred at work" but it is not clear from the record what information the doctor based that statement on. Notably, this conclusion is not stated to a reasonable medical probability.

Respondent Benchmark Administrators, the insurer for Tryke, (insurer) denied Steele's workers' compensation claim, and Steele later sought a hearing concerning that decision. The hearing officer subsequently affirmed the insurer's decision because Steele did not establish that his exposure to allergens arose out of or occurred in the course of his employment.

Steele appealed that decision to an appeals officer. As part of his appeal, Steele sought discovery of logs and contaminant testing conducted by Tryke concerning the cannabis material that Steele encountered during the relevant period of his employment. Tryke provided numerous documents related to that request, but Steele argued to the appeals officer that additional discovery was required because the disclosures were insufficient. However, the appeals officer concluded that additional discovery was not warranted because Steele did not make verifiable claims that any information was withheld.

The appeals officer conducted a hearing and Steele testified at that hearing. Steele discussed his allergic reaction and his subsequent treatments. He also expressed his belief that he was exposed to an allergen in the course of his employment.

The appeals officer later entered a written order affirming the hearing officer's decision to reject Steele's claim. The appeals officer reviewed the documentary evidence concerning the testing of the cannabis material for contaminants, noting that Steele was allergic to dog dander and alternaria alternata. In his decision, the appeals officer found that the test results did not reveal that the cannabis material contained those allergens, although he also noted that the cannabis material had not been tested for alternaria alternata. Nonetheless, the appeals officer found that the records from Steele's medical providers and Steele's testimony were insufficient to establish that Steele's exposure to allergens arose out of or occurred in the course of his employment. Accordingly, the appeals officer found that Steele failed to meet his burden to demonstrate that he suffered an occupational injury or disease.

Steele subsequently filed a petition for judicial review, which the district court denied following a hearing. This appeal followed.

On appeal, Steele challenges the denial of his petition for judicial review, arguing that the appeals officer's decision was not supported by substantial evidence because, among other things, a medical provider indicated that his exposure to allergens occurred in the course of Steele's employment.

Like the district court, this court reviews an appeals officer's decision in workers' compensation matters for clear error or abuse of discretion. NRS 233B.135(3); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008). Our review is confined to the record before the appeals officer, and on issues of fact and fact-based conclusions of law,

we will not disturb the appeals officer's decision if it is supported by substantial evidence. *Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087-88; *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005). "Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." *Vredenburg*, 124 Nev. at 557 n.4, 188 P.3d at 1087 n.4 (internal quotation marks omitted). Further, this court will not substitute its judgment for that of the appeals officer regarding the weight of the evidence on questions of fact. NRS 233B.135(3); *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 331, 849 P.2d 267, 271 (1993).

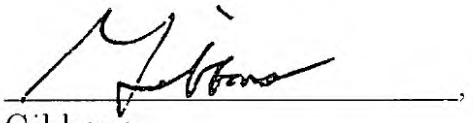
To receive workers' compensation, a worker must show, by a preponderance of the evidence, that an injury or disease arose out of and in the course of his or her employment. *See* NRS 616C.150(1); NRS 617.358(1). "[A]n injury arises out of employment if there is a causal connection between the injury and the employee's work, in which the origin of the injury is related to some risk involved within the scope of employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350-51, 240 P.3d 2, 5 (2010) (internal quotation marks omitted); *see also* NRS 617.440(1)(a) (stating there must be "a direct causal connection between the conditions under which the work is performed and the occupational disease"). Evidence from a physician is sufficient to establish direct causation, but the "physician must state to a degree of reasonable medical probability that the condition in question was caused by the industrial injury . . . ." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424-25, 851 P.2d 423, 425 (1993).

Here, the evidence before the appeals officer showed Steele suffered from an allergic reaction. The appeals officer reviewed Steele's medical records, his testimony from the hearing, and the documentary evidence concerning the contaminant testing of the relevant cannabis material and found that Steele failed to present evidence demonstrating that he was exposed to alternaria alternata in the course of his employment. While Steele points to Dr. Herman's letter that indicated his condition was caused by an exposure to allergens at his workplace, Dr. Herman did not state this conclusion to a reasonable medical probability. And Steele did not otherwise present evidence that a medical provider stated to a reasonable medical probability that his condition was caused by exposure to allergens in the course of his employment. After reviewing the evidence, the appeals officer concluded that the evidence submitted was insufficient to prove a causal connection between Steele's allergic reaction and his employment. Based on our review of the record and parties' briefs, we conclude that the appeals officer's decision upholding the denial of Steele's workers' compensation claim on this basis was supported by substantial evidence. *See Vredenburg*, 124 Nev. at 557 n.4, 188 P.3d at 1087 n.4. Therefore, we conclude that Steele is not entitled to relief based on this claim.

Next, Steele argues that the appeals officer abused his discretion by denying his request for additional discovery. In administrative proceedings, the appeals officer has the authority to approve or deny discovery requests. *See* NAC 616C.305(2).

In this case, the appeals officer noted that Tryke disclosed over 7,000 pages of documents concerning the testing of the relevant cannabis material and Steele did not make verifiable claims that any information was withheld from him. And for those reasons, the appeal's officer denied Steele's request for additional discovery. The record supports the appeals officer's decision, and we conclude that Steele fails to demonstrate the appeals officer abused his discretion in making this determination. *See* NRS 233B.135(3). Therefore, we conclude that Steele is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

[1]On October 6, 2023, Steele filed a motion requesting to submit newly discovered evidence. We have considered Steele's motion and conclude no relief is warranted.

cc: Hon. Monica Trujillo, District Judge
Ethan Steele
Gilson Daub, LLP
Eighth District Court Clerk