

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LYON COUNTY; PUBLIC AGENCY
COMPENSATION TRUST; AND
DAVIES CLAIM SOLUTIONS,
Appellants,
vs.
CRAIG ARNETT,
Respondent.

No. 87195-COA

FILED

AUG 23 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lyon County, Public Agency Compensation Trust, and Davies Claim Solutions (Davies) (collectively referred to as appellants where appropriate) appeal from a district court order denying their petition for judicial review in a workers' compensation case. First Judicial District Court, Carson City; James E. Wilson, Judge.

Facts and procedural history

Craig Arnett is employed as a deputy sheriff for the Lyon County Sheriff's Department.¹ In May 2020, Arnett was running a 300-meter dash as part of a workplace training exercise, when he injured his right knee. Arnett sought treatment and filed a workers' compensation claim. An MRI of Arnett's right knee showed a torn meniscus and grade III and IV chondromalacia (cartilage damage). The claims administrator for Lyon County, Davies, accepted Arnett's claim.

Arnett underwent a meniscectomy on his right knee to repair his torn meniscus and chondroplasty to smooth out the damaged cartilage in his knee. Arnett required a second surgery and, when he failed to improve, he was referred to a joint replacement specialist for further evaluation. Arnett

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

was diagnosed with severe osteoarthritis and underwent a total knee replacement, which greatly improved the mobility of his right knee over time.

Davies then referred Arnett to Craig Black, D.C., to perform an evaluation of Arnett and issue a permanent partial disability (PPD) rating. In his evaluation, Dr. Black stated that, based on the applicable American Medical Association (AMA) guidelines, he believed Arnett had a 20 percent whole person impairment (WPI) for his injury.² However, Dr. Black also opined that 50 percent apportionment was proper because medical documentation showed that Arnett had preexisting osteoarthritis, which predisposed him to injury. Therefore, Dr. Black concluded that after apportionment Arnett should be awarded a 10 percent PPD.

Davies had Dr. Black's evaluation reviewed by two other physicians. While both agreed with Dr. Black that Arnett's total knee replacement equated to a 20 percent WPI under the applicable guidelines, they differed on the applicability of apportionment. One physician opined that apportionment was not proper because Davies failed to produce medical records predating Arnett's workplace injury demonstrating that he would have received a 10 percent PPD rating before that injury. The other physician opined that apportionment was proper because there was physical evidence that Arnett had previously undergone a meniscectomy on the same knee about 20 years prior, supporting that this preexisting condition resulted in the need for his total knee replacement. Following these reviews, Dr. Black amended his initial evaluation and changed his previous

²See NRS 616C.110(1) (adopting the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition).

recommendation for apportionment because he could not substantiate it.³ Despite Dr. Black's amended recommendation, Davies found that apportionment was proper and awarded Arnett a 10 percent PPD, based on a 20 percent WPI for his total knee replacement apportioned by one-half due to his preexisting osteoarthritis. Arnett appealed and the hearing officer reversed, finding that apportionment was not proper in this case under NRS 616C.099 because none of the circumstances warranting apportionment applied.

Finding that apportionment should not be applied, the hearing officer awarded Arnett the full 20 percent PPD. Davies appealed, and the appeals officer likewise found that apportionment was not proper under NRS 616C.099. Specifically, the appeals officer found, among other things, that Davies failed to provide medical documentation showing that Arnett had a ratable disability of his right knee prior to his workplace injury and failed to show that medical documents to that effect were not obtainable, as required under NRS 616C.099(2) and (4). The appeals officer also found that Davies failed to show medical evidence of a prior surgery for Arnett's right knee that would support apportionment under NRS 616C.099(4) (stating that apportionment may be proper if relevant medical documentation that predated the workplace injury is unavailable if there is physical evidence of a prior surgery to the same body part).

³Dr. Black stated in his supplemental report that apportionment was *not* proper in this case, as his previous recommendation included "unsubstantiated apportionment for [Arnett's] marked pre-existing [osteoarthritis] as a causative/contributing etiology for original injury and subsequent [total knee replacement]."

Davies filed a petition for review. The district court denied the petition, also finding that apportionment was not proper under NRS 616C.099. This appeal followed.

On appeal, appellants argue that apportionment is applicable under NRS 616C.099. First, while not a consideration under NRS 616C.099, appellants seem to argue that apportionment was proper because the record shows that Arnett's preexisting osteoarthritis—not his workplace injury—was the cause-in-fact of his total knee replacement. Second, appellants argue that apportionment was proper under NRS 616C.099(4) because there was physical evidence of Arnett's prior surgery on his right knee, despite the appeals officer's erroneous finding to the contrary.

Arnett counters that apportionment is not applicable under NRS 616C.099. First, Arnett argues that the appeals officer properly found that appellants failed to produce medical records predating Arnett's workplace injury and showing that he had a ratable disability of the right knee prior to that injury, and failed to show that such records were unobtainable. Second, Arnett argues that even though he admitted to having a prior surgery on his right knee, apportionment was still improper because the record suggests that he fully recovered from that surgery and was not symptomatic at the time of the workplace injury. We agree with Arnett and therefore affirm.

Standard of review

This court reviews an administrative decision in the same capacity as the district court, and as such, gives no deference to the district court's decision. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). We review an appeals officer's "factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence," and review questions of law de novo. *Id.* (quoting *City of N. Las Vegas v. Warburton*, 127 Nev. 682,

686, 262 P.3d 715, 718 (2011)). “Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency’s conclusion.” *Id.* (quoting *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008)). Further, we “will not reweigh the evidence or revisit an appeals officer’s credibility determination.” *Id.* (quoting *City of Las Vegas v. Lawson*, 126 Nev. 567, 571, 245 P.3d 1175, 1178 (2010)).

Arnett’s workplace injury is compensable under NRS 616C.175(1)

NRS 616C.175(1) provides that injuries arising out of and in the course of employment which aggravate, precipitate, or accelerate a preexisting condition are generally compensable, “unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition.” Here, the record supports that Arnett’s total knee replacement was compensable under NRS 616C.175(1) because his workplace injury exacerbated his potentially preexisting osteoarthritis and was a substantial contributing factor to his need for a total knee replacement. Specifically, two of Arnett’s treating physicians testified that, while Arnett’s underlying osteoarthritis likely preexisted his workplace injury and may have eventually necessitated a total knee replacement, his workplace injury accelerated his need for the total knee replacement. One of Arnett’s treating physicians specifically testified that Arnett’s workplace incident *was* a substantial contributing factor in Arnett’s need for a total knee replacement. And appellants did not otherwise show that Arnett’s workplace injury was “not a substantial contributing cause of” his total knee replacement surgery. Thus, we reject appellants’ argument that Arnett’s surgery was only necessitated by his preexisting condition. Rather, we conclude substantial evidence supports that Arnett’s workplace injury was a substantial contributing factor to his need for knee replacement surgery and is thus compensable.

Arnett's claims should not be apportioned under NRS 616C.099

Under NRS 616C.099, claims may be apportioned in three scenarios. NRS 616C.099(1)-(2), (4). First, if the insurer presents evidence that the claimant was previously rated for a disability related to the same body part the claim can be apportioned. NRS 616C.099(1). Second, if the employee was not previously rated for a disability related to the same body part, apportionment is proper if:

(a) [t]he insurer proves by a preponderance of the evidence that medical documentation or health care records that existed before the date of the injury . . . demonstrate evidence that the injured employee had an actual impairment or disability involving the . . . part of the body that is the subject of the present disability; and (b) [t]he rating physician or chiropractic physician states to a reasonable degree of medical or chiropractic probability that, based upon the specific information in the preexisting medical documentation or health care records, the injured employee would have had a specific percentage of disability immediately before the date of the injury.

NRS 616C.099(2)(a)-(b). And third, if pertinent medical records predating the workplace injury cannot be obtained, apportionment is proper if there "is physical evidence of a prior surgery to the same . . . part of the body being evaluated for the present disability" and the requirements of subsection 2 are satisfied, other than any requirement to have medical documentation or health care records or base a rating upon medical documentation or health care records. NRS 616C.099(4).

After considering the statutory circumstances that permit apportionment, we conclude that the appeals officer correctly determined that apportionment was not proper under NRS 616.099 for several reasons. First, as undisputed by the parties, Arnett did not have a prior disability rating for the right knee before the industrial injury. Second, the appeals

officer properly determined that appellants failed to show that medical documentation concerning Arnett's right knee that predated the workplace injury could not be obtained in order to consider apportionment without such documentation. See NRS 616C.099(4) (allowing apportionment based on physical evidence only if medical records predating the workplace injury are unobtainable). This finding is supported by substantial evidence, as the record demonstrates appellants did not produce any medical documentation that predated Arnett's workplace injury concerning his knee, nor did they show that such medical documentation was unobtainable. See *Flamingo Hilton v. Gilbert*, 122 Nev. 1279, 1282, 148 P.3d 738, 740 (2006) (“[O]ur review is limited to the record before the appeals officer.”).

Appellants' argument that they were unable to obtain medical records because any medical records concerning Arnett's prior knee surgery were presumptively destroyed after five years is unpersuasive because it misapprehends the requirements of NRS 616C.099(2). Specifically, the statute does not necessarily require appellants to produce medical documentation of Arnett's prior knee surgery, but rather to produce *any* medical records predating Arnett's workplace injury that showed, by a preponderance of the evidence, that Arnett had “an actual impairment or disability” related to his right knee that could be rated before his workplace injury occurred. NRS 616C.099(2)(a). Because appellants failed to produce any medical records predating the workplace injury to support that Arnett's right knee was ratable before the injury, or to show that such records existed but were unobtainable, we conclude that the appeals officer's finding that appellants failed to produce necessary records to support apportionment was not clearly erroneous.

Third, even if we accepted appellants' contention that relevant medical documentation predating Arnett's workplace injury was

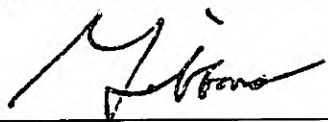
unobtainable, because 20 years had passed since Arnett's initial surgery, we would still conclude that apportionment was inapplicable in this case under NRS 616C.099(4). Specifically, appellants failed to show by a preponderance of the evidence that Arnett "had an actual impairment or disability" in his right knee such that it could be rated prior to his workplace injury. NRS 616C.099(2), (4). Although Arnett had prior right knee surgery—about 20 years ago—his knee was asymptomatic prior to his workplace injury. While, on appeal, appellants place great weight on the severe osteoarthritis discovered in Arnett's right knee *after* his workplace injury, this is not probative of whether he had a ratable disability of the right knee immediately *before* his injury. *See id.* Additionally, Dr. Black declined to include in his evaluation that Arnett "would have had a specific percentage of disability immediately before the date of the injury," as was required for apportionment under NRS 616C.099(4). *See id.* Indeed, Dr. Black amended his initial evaluation to state that apportionment was not appropriate in this case. Thus, we conclude that appellants failed to show that apportionment of Arnett's disability rating was proper under NRS 616C.099.

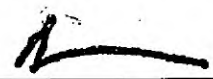
Finally, we address appellants' argument that *Ransier v. SIIS*, 104 Nev. 742, 766 P.2d 274 (1988), supports their contention that apportionment is proper in this case. In *Ransier*, the Supreme Court of Nevada affirmed an appeals officer's determination that apportionment was proper where an employee injured his knee—on which he had previously received surgery—at work. *Id.* at 744-45, 766 P.2d at 275-76. Although there was no medical documentation regarding the employee's prior surgery at the time of his subsequent workers' compensation claim, the supreme court determined that the appeals officer did not abuse its discretion in apportioning the claim because two physicians stated that the employees

present workplace injury could not have caused the level of osteoarthritis in his knee at the time of the subsequent surgery. *Id.*

However, *Ransier* predated the enactment of NRS 616C.099, which amended the evidentiary burden insurers must meet to apportion claims. *See In re Est. of Thomas*, 116 Nev. 492, 495, 998 P.2d 560, 562 (2000) (“[W]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute.” (quoting *Sheriff v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975)); *Hearing on S.B. 289 Before the Assemb. Comm. on Commerce and Labor*, 81st Leg. Sess. 26 (Nev., May 7, 2021) (stating that NRS 616C.099 “clarif[ied] exactly how apportionment should be done”). NRS 616C.099(4) now sets forth specific requirements in the event an insurer cannot obtain medical documentation that predated the workplace injury in order to apportion the claim, which renders the supreme court’s analysis in *Rasnier* unpersuasive. Accordingly, we conclude that appellants failed to meet the requirements set forth in NRS 616C.099 to support apportionment and therefore, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁴Insofar as appellants raise other arguments that are not specifically addressed herein, we have considered the same and conclude that they do not present a further basis for relief.

cc: First Judicial District Court
First Judicial District Court, Dept. 2
Thorndal Armstrong/Reno
Jay Short - Attorney at Law
Carson City Clerk