IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEDGWICK CMS INC.; AND CINTAS CORPORATION,
Appellants,
vs.
AGNES AUGUST,
Respondent.

No. 89477-COA

ORDER OF REVERSAL

Sedgwick CMS Inc. and Cintas Corporation appeal from a petition for judicial review in a workers' compensation action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.[1]

Respondent Agnes August was employed by the Cintas Corporation as a seamstress, performing alterations to uniforms for the Las Vegas Metropolitan Police Department warehouse. On August 24, 2022, approximately five minutes before her shift started, August entered the warehouse by running and ducking under a closing garage door at an employee entrance of the warehouse.

After she ducked under the door and was about to stop running, she twisted her ankle, causing her to fall and injure her left arm and shoulder while trying to protect her head from hitting the floor. August testified she did not know why she fell, just that she twisted her ankle after running under the closing garage door. She did not explain why she ran but stated that she was already past the garage door when she fell and that

[1]Sedgwick CMS Inc. and Cintas Corporation are collectively referred to as "appellants" throughout this order. To the extent either party is mentioned individually, this court refers to each as "Sedgwick" and "Cintas," respectively.

there was no hazard, defect, or any other issue with the floor or the garage door upon her entry. The warehouse facility had five or more other doors that employees could use for access.

August informed her supervisor of the fall on the same day as the accident but declined to file a formal report of the accident or claim for injury. Approximately four months later, August's supervisor directed her to report the injury, and she did so in January 2023. Her report was treated as timely filed.

August's medical provider initially diagnosed her with a left shoulder strain. Subsequent medical evaluations throughout January continued to reveal a left shoulder strain. Following an MRI review, medical providers found that August's left rotator cuff was torn. August completed her workers' compensation benefits questionnaire in February 2023, describing the nature and circumstances of her accidental injury therein.

Later that month, Sedgwick, the benefit claims insurer for Cintas, notified August that her claim for workers' compensation benefits had been denied—concluding that the evidence did not demonstrate an injury from an industrial accident or workplace condition arising out of the course and scope of her employment.

August appealed the denial by Sedgwick to the Nevada Department of Administration (NDOA). The hearing officer assigned to August's case directed her to submit a copy of the benefit claims insurer determination that was the subject of her appeal, warning her that failure to submit a copy of the determination would result in dismissal. August failed to supply the required documentation and, one month later, the hearing officer ordered dismissal of her case.

August appealed the hearing officer's dismissal to the appellate division of the NDOA. A hearing was held where August testified and the appeals decision followed in January 2024. The appeals officer affirmed the dismissal and Sedgwick's claim denial.[2] The appeals officer determined that August suffered an "idiopathic" fall, concluding that the injury did not arise out of her employment and was, therefore, non-compensable under the Nevada Industrial Insurance Act (NIIA).

Despite August's claim that her injury was the result of an employment-related risk, the appeals officer concluded that August did not demonstrate how her injuries were sufficiently connected to a risk associated with the nature of her work and her work environment. The appeals officer instead determined that August's injury resulted from a neutral risk, meaning she faced a risk similar to that of the general public, and not a personal or work risk. The appeals officer also applied the increased-risk test adopted by the Nevada Supreme Court in *Rio All Suite Hotel & Casino v. Phillips*,[3] finding that August failed to provide any quantitative evidence demonstrating that she faced an increased risk of accidental injury when compared to the same risk of accidental injury faced by that of the general public. The appeals officer therefore concluded that no analysis could be conducted to evaluate whether August faced an

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[2]Appellants do not raise the issue of the hearing officer's dismissal of the claim on appeal as a procedural basis to reinstate the appeals officer's denial of August's claim for workers' compensation benefits under NIIA, so we need not address it. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (declining to consider issues that the appellant failed to raise on appeal).

[3]126 Nev. 346, 352-54, 240 P.3d 2, 6-7 (2010) (adopting the "increased-risk test" as the "single test to be applied when determining whether an injury caused by a neutral risk arose out of employment").

increased risk of accidental injury compared to a member of the general public.

August filed a petition for judicial review challenging the appeals officer's decision. The district court granted her petition, determining that the appeals officer erred as a matter of law by applying the *Phillips* framework. According to the district court, the appeals officer should have applied the premises-related exception to the going-and-coming rule, as adopted in *MGM Mirage v. Cotton*, 121 Nev. 396, 116 P.3d 56 (2005).[4] This appeal followed.

On appeal, both parties frame their arguments as to whether the district court's order granting August's petition for judicial review should be affirmed or reversed. But we need not approach the purported errors of the district court to resolve this appeal, as our inquiry is pointed towards the decision and order at the administrative appeals level, asking whether the appeals officer erred or otherwise abused her discretion by denying August's claim for workers' compensation benefits under the NIIA. We agree with appellants, so we necessarily reverse the district court's order granting the petition for judicial review. *See City of North Las Vegas v. Warburton,* 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) ("The standard for reviewing petitions for judicial review of administrative decisions is the

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[4]The going-and-coming rule establishes that "injuries sustained by employees while going to or returning from their regular place of work are not deemed to arise out of and in the course of their employment." *Nev. Indus. Comm'n v. Dixon*, 77 Nev. 296, 298, 362 P.2d 577, 578 (1961). Nevada adopted the premises-related exception to the going-and-coming rule in *Cotton*, holding that "an employee who is injured on the employer's premises within a reasonable interval before or after work may be eligible for workers' compensation." *Cotton*, 121 Nev. at 401, 116 P.3d at 58-59.

same for [the appellate court] as it is for the district court."). No deference is afforded to the district court's decision, *see id.*, and our review is confined to the record before the agency's appeals officer, *see State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 87-88, 787 P.2d 408, 409 (1990).

We review questions of law de novo, *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349 240 P.3d 2, 4 (2010), but we will not substitute our "judgment for that of the agency as to the weight of evidence on a question of fact." NRS 233B.135(3)-(4) (providing standards, procedures, and limitations on the judicial review of a final decision of an agency). The final decision of an agency may be reversed if it exceeds constitutional or statutory provisions, or if the decision is made upon unlawful procedure, clearly erroneous in the view of substantial evidence, arbitrary or capricious or otherwise characterized by abuse of discretion. *See* NRS 233B.135(3)(a)-(f) (listing circumstances where the court may remand or affirm the final decision of an agency or set it aside in whole or in part). We "defer to an agency's findings of fact as long as they are supported by substantial evidence." *Phillips*, 126 Nev. at 349, 240 P.3d at 4; *see also* NRS 233B.135(4) (defining "substantial evidence" as "evidence which a reasonable mind might accept as adequate to support a conclusion").

Here, the district court erred when it reversed the appeals officer's decision and order because August failed to provide an adequate basis for reversal under the applicable judicial review statutes and caselaw, and the ultimate denial of August's claim was supported by the administrative record. *See generally* NRS 233B.135(a)-(f); *Phillips*, 126 Nev. at 349, 240 P.3d at 4. Therefore, we reinstate the appeals officer's

administrative decision and order denying August's claim for benefits under the NIIA.

The appeals officer did not err or abuse her discretion by applying the Phillips *framework to her compensability analysis*

Appellants chiefly argue that the administrative denial by the appeals officer was properly grounded by the risk assessment adopted under the *Phillips* framework. They submit that the premises-related exception to the going-and-coming rule adopted under *Cotton* is inapplicable to the facts and circumstances of this case, and that August's claim under *Cotton* was not advanced before the appeals officer at the administrative level.

August answers that the appeals officer's application of *Phillips* to the facts of this case constituted legal error, and that the district court's reliance on *Cotton* in favor of the *Phillips* framework (or the "increased-risk test") warranted reversal of the claim denial. August further argues that "the fact that *Cotton* was not argued before the appeals officer . . . does not mean that the appeals officer, or the district court, must ignore or disregard the correct law when it applies." August also maintains that she was in the reasonable performance of her duties when she was injured at work and that whether her injuries are the result of her own fault is irrelevant given Nevada's no-fault workers' compensation statutes. Notably, August does not argue that the appeals officer misapplied *Phillips* or the increased-risk test; only that she should not have applied it at all.

As an initial matter, appellants' argument is well taken that the application of *Cotton* and related arguments under the premises-related exception need not be considered because August did not argue that doctrine before the appeals officer. Nevada courts have consistently applied the waiver or forfeiture principle in workers' compensation cases involving

administrative appeals decisions. *See, e.g., Highroller Trans., LLC v. Nev. Transp. Auth.*, 139 Nev. 500, 507, 541 P.3d 793, 802 (Ct. App. 2023) (emphasizing that the "necessity of a fully developed record applies with no less force in administrative agency appeals, such as [the claimant's] where appellate review is strictly confined to the agency record"); *see also State ex. rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) ("Because judicial review of administrative decisions is limited to the record before the administrative body, we conclude that a party waives an argument made for the first time to the district court on judicial review."); *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424, 851 P.2d 423, 424 (1993) (stating that the appellate court's review of an agency decision is limited to the agency record); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been [forfeited] and will not be considered on appeal").

Here, the application of *Cotton* or the premises-related exception to the going-and-coming rule was not briefed or argued before the appeals officer in this case. Indeed, August concedes that it was not. So, to the extent August advances arguments on appeal under *Cotton* suggesting that the appeals officer erred in her analysis, we need not consider such arguments. Nevertheless, we address this purportedly controlling law in *Cotton* as it informs our review of the appeals officer's decision and order.

To receive workers' compensation under the NIIA, an injured employee must "establish by a preponderance of the evidence that the employee's injury *arose out of* and *in the course of his or her employment*." NRS 616C.150(1) (emphasis added). This is a two-prong inquiry. *Cotton*, 121 Nev. at 400, 116 P.3d at 58. One prong asks whether the injury

occurred in the course of employment. *Id.* Generally, "whether an injury occurred in the course of employment refers merely to the time and place of employment, *i.e.*; whether the injury occurs at work, during work hours, and while the employee is reasonably performing his or her duties." *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

The other prong asks whether the injury arose out of employment. *Cotton*, 121 Nev. at 400, 116 P.3d at 58. "An accident or injury is said to arise out of employment when there is a causal connection between the injury and the employee's work." *Rio Suite Hotel & Casino v. Gorsky,* 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997). The injured employee "must establish a link between the workplace conditions and how those conditions caused the injury" and "demonstrate that the origin of the injury is related to some risk involved within the scope of employment." *Id.* "[I]f an accident is not fairly traceable to the nature of employment or the workplace environment, then the injury cannot be said to arise out of the claimant's employment." *Id.* The employee "must show that the origin of the injury is related to some risk involved within the scope of employment." *Phillips,* 126 Nev. at 350, 240 P.3d at 5 (quoting *Mitchell v. Clark Cty. Sch. Dist.,* 121 Nev. 179, 182, 111 P.3d 1104, 1106 (2005)); *see also Wood,* 121 Nev. at 733, 121 P.3d at 1032 ("An injury is said to arise out of one's employment when there is a causal connection between the employee's injury and the nature of the work or workplace.").

The Nevada Supreme Court has developed a framework for analyzing whether injuries "arose out of" employment by examining different types of risks that employees face, which can be understood as falling into one of the following general categories of risk—employment risk, personal risk, neutral risk, and mixed risk. *See Baiguen v. Harrah's Las*

Vegas, LLC, 134 Nev. 597, 600, 426 P.3d 586, 590 (2018) (citing *Phillips*, 126 Nev. at 351-53, 240 P.3d at 5-7). Relevant to this case, a *neutral risk* refers to a danger or hazard that has no particular employment or personal character—it is neither distinctly connected to the employment nor to the employee's personal circumstances. *Phillips*, 126 Nev. at 351-52, 240 P.3d at 6. If the appeals officer determines that the risk of injury is neutral, the compensability of the claim turns on the increased-risk test—or whether the nature of the work or the workplace contributes to or increases the risk of that injury to the worker and is more than the risk of injury to a member of the general public. *Id.* Even if a risk to which the employee is exposed "is [not] qualitatively . . . peculiar to the employment," the injury may be compensable if the claimant faces an "increased quantity of a risk." *Id.*

Here, as the appeals officer noted in her decision and order, the "parties do not dispute that [August] suffered an injury by accident" in August 2022 and no controversy existed between the parties in the briefing before the appeals officer as to whether August's injury occurred while in the course of her employment. Therefore, the applicable test from *Cotton* was satisfied without dispute, as explained further below. *See Cotton*, 121 Nev. at 400, 116 P.3d at 58. So, for our purposes, we need only address one prong of the two-part inquiry—*i.e.*, whether the appeals officer correctly analyzed whether August's injury "arose out of" her employment. Insofar as August suggests that the premises-related exception to the going-and-coming rule adopted in *Cotton* somehow contravenes the appeals officer's application of the *Phillips* framework as a matter of law, we are unpersuaded, and we again note that this argument was not presented to the appeals officer.

There is no apparent reason, nor does August advance one persuasively, to suggest that the appeals officer in this case erred in her omission of a premises-related exception analysis under *Cotton,* if *Cotton* was applied by the appeals officer. Critically, there was no controversy over the "in the course of employment" prong of the compensability analysis before the appeals officer, and the most recent caselaw relies on *Cotton* only in consideration of that prong. In *Buma v. Providence Corp. Development*, our supreme court noted that "to be compensable under the NIIA, a traveling employee's injury must have arisen out of the employment" but cited *Cotton* only for the general proposition that both requirements must be met—not for guidance on the "arose out of" prong of the analysis. *See* 135 Nev. 448, 454-455, 453 P.3d 904, 910 (2019). Previously in *Baiguen*, the supreme court merely cited *Cotton* to evaluate whether the claimant's injury occurred in the course of employment—not whether the injury arose out of his employment. 134 Nev. at 600, 426 P.3d at 590 ("Under *Cotton*, Harrah's alleged failure to aid Baiguen occurred in the course of Baiguen's employment.").[5]

Consistent with the approach clarified in *Buma* and *Baiguen*, we conclude that the risk assessment under the *Phillips* framework remains

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[5]We further note that the premises-related exception articulated by *Cotton* appears relegated to the "in the course of employment" prong of the compensability analysis because it addresses the temporal, spatial, and circumstantial aspects of when and where an injury occurs, while the "arising out of employment" prong requires a separate causal analysis examining the relationship between the injury and employment-related risks. The distinction between these two conjunctive requirements has been clarified through the progression of *Cotton*, *Phillips*, *Baiguen*, and *Buma*, with each case refining Nevada's framework for determining compensability of NIIA claims.

the first-step when determining the compensability of a workers' compensation claim under NIIA when the "course of employment" is not at issue and the "arose out of employment" is at issue. *See Phillips*, 126 Nev. at 350, 240 P.3d at 5 (holding that the determination of the "type of risk faced by the employee is an *important first step* in analyzing whether the employee's injury arose out of [claimant's] employment" (emphasis added)); *see also Eplica Corp. Servs. v. Langley*, No. 83563-COA, 2022 WL 3499527 (Nev. Ct. App. Aug. 17, 2022) (Order of Reversal and Remand) ("We read the type of risk analysis under *Phillips* to be a necessary threshold inquiry in determining whether a risk is in fact compensable"); *Durst v. Silver State Cultivation, LLC*, No. 81393-COA, 2022 WL 500611, at *4 (Nev. Ct. App. Feb. 17, 2022) (Order of Reversal and Remand) ("We read *Phillips* as requiring a resolution of this necessary threshold inquiry in determining whether a risk is in fact compensable.").

Because the parties agreed on administrative appeal that August's injury was sustained in the course of her employment, any further substantive analysis under that prong by the appeals officer was unnecessary as a matter of law. *Cf.* NRS 233B.135(3)(d) ("The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is . . . [a]ffected by other error of law"). Accordingly, no basis exists to disturb the appeals officer's findings on this issue, even if *Cotton* was not directly applied, and we conclude that she correctly applied *Phillips* under the circumstances of this case.

August does not argue that the appeals officer misapplied Phillips *in determining that August's injury is not compensable under the NIIA and no error occurred*

Turning to the merits of the appeal officer's compensability analysis under the "arose out of" prong, we note that August does not challenge the appeals officer's decision and order except as to whether the correct law was applied when the appeals officer used *Phillips*. Specifically, she does not challenge the manner in which *Phillips* was applied. Because we determine that *Phillips* was the correct law to apply, no basis exists under our statutes and caselaw that would warrant reversal of the appeals officer's decision and order denying August's claim for benefits under the NIIA. Therefore, we need not consider her argument further. *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 need not be considered); *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an argument that is not cogently argued or lacks the support of relevant authority).

Nevertheless, August argues that she should be compensated because the accidental injury happened at work during workplace hours, *Cotton* controls the two-prong analysis, and *Phillips* is inapplicable. However, falls that are not attributable to premise defects or a personal condition are generally construed as "neutral risks" by Nevada courts. *See Baiguen*, 134 Nev. at 601, 426 P.3d at 591 (describing "a fall that is not attributable to premise defects or a personal condition" as a "neutral risk" and not an "employment risk"); *see also Phillips*, 126 Nev. at 351, 240 P.3d at 5 ("Slips and falls that are due to employment risks include tripping on

a defect at [the] employer's premises or falling on uneven or slippery ground at the work site." (internal quotation marks omitted)).

Further, as to the increased-risk test, the appeals officer found that August failed to provide sufficient evidence demonstrating how her use of the garage door as an employee placed her at greater risk of injury than that of the general public. In her denial of August's claim, the appeals officer noted that no quantitative evidence was proffered by August to demonstrate that she faced such increased risk of the injury she sustained. *Cf. Phillips*, 126 Nev. at 353-54, 240 P.3d at 7 (determining that the employee faced an increased risk regarding her fall down a set of stairs because she was required to use the stairs more frequently than a member of the public would be required to); *Mitchell*, 121 Nev. at 183-84, 111 P.3d at 1107 (concluding that the claimant's work environment did not cause her to fall, and the staircase did not make her workplace conditions any different from or any more dangerous than those a member of the general public could expect to confront in a non-work setting).

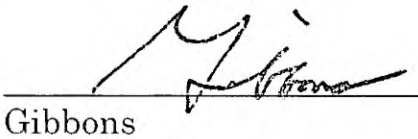
We ultimately defer to the appeals officer's factual findings and conclusions of law on this issue. On appeal, as below, August does not argue that she suffered an increased risk of injury in comparison with the general public, nor does she contend that the appeals officer's decision was unsupported by substantial evidence in the administrative record. *See Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013) (reviewing factual findings only for clear error or an arbitrary abuse of discretion); *see also* NRS 233B.135(3)(e)-(f).

We therefore conclude that the appeals officer did not err or otherwise abuse her discretion in application and execution of the *Phillips* framework in her risk and compensability analyses. The appeals officer's

categorization of August's accidental injury risk as "neutral" was supported by the record, and the appeals officer could reasonably find that August did not meet her evidentiary burden under the increased-risk test. Moreover, we emphasize again that August does not argue that the increased-risk test was misapplied under *Phillips* or persuasively advance any alternative legal argument with evidentiary support to challenge the findings under the "arose out of employment" prong of the compensability analysis.

Accordingly, we ORDER the judgment of the district court REVERSED and the decision and order of the appeals officer REINSTATED.[6]


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Michelle L. Morgando, Settlement Judge
Hooks Meng & Clement
Nevada Attorney for Injured Workers/Las Vegas
Eighth District Court Clerk

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[6]Insofar as the parties have raised other arguments not specifically addressed in this order, we need not consider them in light of our disposition or have considered the same and conclude that they do not present a basis for relief.