IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY YADA,
Appellant,
vs.
CLARK COUNTY SCHOOL DISTRICT, EMPLOYER, AND SIERRA NEVADA ADMINISTRATORS, THIRD-PARTY ADMINISTRATOR,
Respondents.

No. 90180-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Gary Yada appeals from a district court order granting respondents' petition for judicial review. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Yada suffered an injury to his cervical spine in a car accident arising out of his employment with respondent Clark County School District. Yada received net proceeds from a third-party settlement totaling $32,118.35 and was found to have a nine percent permanent partial disability (PPD) whole person impairment. Respondents subsequently informed Yada that his PPD award would be offset by his settlement funds.

Several years later, Yada sought to reopen his claim and respondent Sierra Nevada Administrators (the insurer) denied his request until he exhausted the remaining balance of the third-party settlement funds. Yada appealed to a hearing officer, who found Yada had met his burden to show that his claim should be reopened but remanded the matter for Yada to provide documentation regarding the allocation and dispersal of settlement funds and for the insurer to review the documents and issue a

new claim reopening determination. Yada appealed that determination to an appeals officer.

Following a hearing, the appeals officer issued a written decision reversing the insurer's denial of Yada's request to reopen his claim and the hearing officer's order to the extent it was inconsistent with the appeals officer's order. The appeals officer ordered the insurer to reopen Yada's claim and pay accident and workers' compensation benefits and interest retroactive to Yada's November 2017 request. Relying on *Poremba v. Southern Nevada Paving*, 133 Nev. 12, 18, 388 P.3d 232, 238 (2017), *overruled by AmTrust N. Am., Inc. v. Vasquez*, 140 Nev., Adv. Op. 61, 555 P.3d 1164 (2024), the appeals officer concluded that half of Yada's third-party settlement funds were to be allocated as pain and suffering and, therefore, the insurer was not entitled to reimbursement for that half of the settlement proceeds. The appeals officer further found that Yada had established he exhausted the third-party settlement funds.

Respondents timely filed a petition for judicial review, arguing the appeals officer's decision was arbitrary, capricious, and based on a clear error of law. The district court granted respondents' petition, concluding that the appeals officer's decision was arbitrary, capricious, and based on a clear error of law. This appeal followed.

On appeal, Yada challenges the district court's decision to grant the petition for review. This court's standard for reviewing petitions for judicial review is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). In this context, "this court examines the administrative decision for clear error or abuse of discretion." *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005). While "we independently review purely legal

determinations," on issues of fact and fact-based conclusions of law this court will not disturb the appeals officer's decision if it is supported by substantial evidence. *Id.* Substantial evidence is evidence that a reasonable person could accept as adequate to support a conclusion. NRS 233B.135(4); *Campbell v. Nev. Tax Comm'n*, 109 Nev. 512, 516, 853 P.2d 717, 719 (1993).

NRS 616C.390(1) sets forth the required findings that compel reopening of a workers' compensation claim. NRS 616C.215(2)(a) provides that when an injured employee who receives workers' compensation also recovers damages from the responsible party, the amount of workers' compensation benefits must be reduced by the amount of the damages recovered. Under NRS 616C.215(5) "in any case where the insurer . . . is subrogated to the rights of the injured employee . . . the insurer . . . has a lien upon the total proceeds of any recovery from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement or otherwise." Further, an insurer may refuse to pay additional funds via reopening a workers' compensation claim until the claimant demonstrates that he or she has exhausted any third-party settlement funds and medical expenses are considered to be compensation that an insurer may withhold until the recovery amount has been exhausted. *Emps. Ins. Co. of Nev. v. Chandler*, 117 Nev. 421, 426, 23 P.3d 255, 258 (2001).

Our supreme court previously held that insurers were not entitled to recover the amount of a settlement that was attributable to pain and suffering or any other expense beyond the scope of workers' compensation defined in NRS 616A.090. *Poremba*, 133 Nev. at 18, 388 P.3d at 238. However, the supreme court later overruled that portion of

Poremba, concluding that it conflicted with the plain language of NRS 616C.215, which provides that an insurer's lien applies to the total settlement proceeds, and held that "an insurer may assess the total proceeds of a third-party settlement, even where the matter is reopened pursuant to NRS 616C.390 and irrespective of whether the proceeds are designated as economic or noneconomic in nature." *AmTrust*, 140 Nev., Adv. Op. 61, 555 P.3d at 1170-71.

In this case, *Poremba* had not yet been overruled when the appeals officer issued its decision. Relying on *Poremba*, the appeals officer retroactively determined that half of Yada's third-party settlement ($16,059.17) would be attributed to pain and suffering and thus was not recoverable by the insurer in determining whether Yada had exhausted the settlement funds. The appeals officer then determined that Yada had demonstrated he exhausted the settlement amount he had received.

Following the issuance of the appeals officer's order, the supreme court published *AmTrust*, and the district court granted respondents' petition for judicial review based on that opinion, concluding that *AmTrust* controlled and the appeals officer incorrectly applied *Poremba*. We conclude the district court properly determined that under *AmTrust*, respondents were entitled to offset the entirety of Yada's third-party settlement when determining if he had exhausted his settlement funds and that the nature of the proceeds was irrelevant. *See AmTrust*, 140 Nev., Adv. Op. 61, 555 P.3d at 1170-71. As such, to the extent the district court's order reversed the appeals officer's determination that, pursuant to *Poremba*, half of Yada's third-party settlement was allocated as pain and suffering and thus could not be offset by the insurer, we affirm. *See Grover C. Dils Med. Ctr.*, 121 Nev. at 283-84, 112 P.3d at 1097.

However, our analysis does not end there because the appeals officer also found that the parties did not dispute that Yada's claim should be reopened and that Yada had exhausted the settlement funds by the time the insurer had denied Yada's claim reopening request. Yada argues that, even without the allocation of pain and suffering, the evidence in the record supports the appeals officer's determination that his medical expenses had exhausted his settlement funds.[1] The record contains numerous medical receipts and a hospital bill for Yada's later surgery for over $98,000.

Respondents do not challenge the finding that Yada's claim should be reopened and similarly do not argue the evidence is insufficient to demonstrate Yada exhausted his settlement funds without the allocation of pain and suffering. Moreover, the district court's order noted that respondents "only [took] issue with the incorrect application of *Poremba* to the instant matter."

Given the medical receipts and billing contained in the record, we conclude that the appeals officer's determination that the medical evidence demonstrated that Yada exhausted his settlement funds is supported by substantial evidence. Thus, to the extent the district court's

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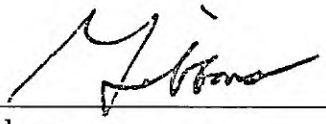
[1]It appears that the appeals officer used Yada's purchase of a vehicle as part of its determination that he had exhausted the settlement funds. However, it is unclear that this was appropriate in light of NRS 616A.035(3)(c) (providing that accident benefits do not include motor vehicles, unless otherwise provided in NRS 616C.245) and NRS 616C.245(2) (explaining that injured employees are entitled to receive as an accident benefit a car that is modified to allow the employee to operate the car safely if the injured employee is quadriplegic, paraplegic, or an amputee as a result of the industrial injury, and the employee cannot be fitted with a prosthetic device allowing him to operate the car safely), but even without accounting for the vehicle, there is sufficient evidence he exhausted the settlement amount.

order reversed the appeals officer's exhaustion determination, we conclude that was error and we reverse its order in that respect and remand for respondents to reopen Yada's claim and determine his entitlement to benefits. *See id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Michelle L. Morgando, Settlement Judge
Kemp & Kemp
Hooks Meng & Clement
Eighth District Court Clerk