



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MOUNTAINVIEW HOSPITAL,
Appellant,
vs.
ANGELIQUE FISHER,
Respondent.

No. 90422-COA

ORDER OF AFFIRMANCE

Mountainview Hospital (Mountainview) appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Tina Talim, Judge.

Respondent Angelique Fisher was previously employed as a registered nurse at Mountainview in its critical care unit. On October 19, 2015, Fisher used a draw sheet to move a patient towards the head of the bed when she felt a pop/pull in her back followed by general achiness. Fisher completed her shift without reporting the incident because she believed the achiness would resolve with rest and a warm bath as it was not unusual to be sore following a nursing shift. Fisher continued to experience pain and on October 22, 2015, began to experience numbness in her left leg. Ultimately, Fisher did not report the injury until October 27, 2015, as she had been on preapproved leave from work and it was not until October 26, 2015 that her primary care physician referred her for an MRI.

Despite notifying Mountainview of the injury on October 27, 2015, Mountainview did not provide Fisher with the required C-4 form until November 3, 2015; and Fisher then promptly completed the form. Broadspire, which serves as Mountainview's workers' compensation

insurer, then denied Fisher's claim because she failed to report the injury within seven days. Fisher filed an administrative appeal and following a hearing officer decision, which affirmed the denial, an appeals officer held an evidentiary hearing.

During the hearing, Fisher testified she was performing her job duties when she felt a pop/pull, she was unaware of the reporting deadline, and she did not timely report the injury because she mistakenly believed the injury would resolve itself with rest. Fisher further testified that she reported the incident on October 27, 2015, because that was the day she was scheduled to return to work and, despite informing a supervisor, she was not told to complete a C-4 form until much later. Additionally, the parties stipulated to the admission of various medical documents, including medical records from two different physicians who opined that Fisher's lumbar injury was related to the October 19, 2015, incident. However, a third doctor was unable to determine whether the injury was related to a workplace accident.

Ultimately, the appeals officer found that Fisher's failure to provide timely notice was excused pursuant to NRS 616C.025(2) because she mistakenly believed the injury would resolve with rest, she was on a preapproved leave from work which further delayed the reporting, she was unaware of the reporting deadline, and Mountainview failed to provide her with a C-4 form in a timely manner. Additionally, the appeals officer found that Fisher's testimony and the medical documents clearly established the injury occurred during the performance of her job duties and thus constituted a compensable industrial injury. Mountainview then filed a petition for judicial review, which was denied. This appeal followed.

“On appeal, this court’s role is the same as the district court’s: to review an appeals officer’s decision for clear error or arbitrary abuse of discretion.” *Las Vegas Metro. Police Dep’t v. Holland*, 139 Nev. 96, 98, 527 P.3d 958, 962 (2023) (internal quotation marks omitted). However, this court “independently review[s] the appeals officer’s purely legal determinations, including those of statutory construction.” *Id.* at 98-99, 527 P.3d at 962.

Mountainview first asserts on appeal that the question of whether Fisher’s failure to timely notify her employer was excused is a question of law that this court reviews de novo. In response, Fisher maintains this court owes deference to the appeals officer as it was a question of fact. The supreme court has previously affirmed appeals officers’ decisions regarding NRS 616C.025(2) when the finding is supported by substantial evidence. *See Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 548, 2 P.3d 850, 854 (2000) (“We conclude that substantial evidence in the record clearly supports the appeals officer’s alternative finding that Peterson’s failure to file a timely claim for compensation was excused under NRS 616C.025(2).”); *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362 n.4, 184 P.3d 378, 383 n.4 (2018) (affirming the appeals officer’s “fact-based conclusion” that the employee’s failure to timely report her accident was excused pursuant to NRS 616C.025(2)(b) because it “was supported by substantial evidence”). And the substantial evidence standard is used to evaluate factual findings under the abuse of discretion standard. *See Holland*, 139 Nev. at 98, 527 P.3d at 962 (holding appellate courts apply an abuse of discretion standard to appeals officer’s decisions and will affirm factual findings if supported by substantial evidence). Accordingly, we apply an abuse of discretion standard to determine whether the appeals

officer properly found Fisher's failure to provide timely notice of the accident was excused.

Pursuant to NRS 616C.015(1) an employee must provide notice of an injury that arose out of and in the course of employment to their employer within seven days after the injury. Further, this notice must be provided in writing on a form prescribed by the Administrator. NRS 616C.015(2)(a). However, the insurer may excuse the failure to provide timely notice if the failure was due to the employee's "mistake or ignorance of fact or of law." NRS 616C.025(2)(b). And although the statute gives "broad discretionary power to employers as to whether they should accept or reject employees' excuses" this decision is "reviewable de novo by an administrative officer." *Barrick Goldstrike Mine*, 116 Nev. at 548, 2 P.3d 850 at 854.

Mountainview contends substantial evidence does not support the appeals officer's decision as the appeals officer "provides no rationale or basis for how there was a mistake or ignorance of fact or law." In response, Fisher maintains that substantial evidence supports her claim as she mistakenly believed the injury was not serious and would resolve with rest and a warm bath. In response, Mountainview highlights Fisher did not submit a C-4 form until November 2015, and that rather than seeking medical care, Fisher "took a planned week-long vacation" and suggests Fisher filed a claim purely to avoid being disciplined for calling out of work.

Having reviewed the record, we conclude substantial evidence supports the appeals officer's finding that Fisher's untimely notice was due to a mistake or ignorance of fact or law. Mountainview essentially asks this court to reweigh the evidence presented or otherwise reassess Fisher's credibility on appeal. However, this court will not do so. *See Quintero v.*

McDonald, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh the evidence on appeal); *see also Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal). Here, substantial evidence supports the decision where Fisher testified she believed the injury was not serious as it was common for her to be sore following a nursing shift. *See Barrick Goldstrike Mine*, 116 Nev. at 548, 2 P.3d at 854 (affirming an appeals officer's finding that an employee's failure to timely inform his employer was excused as a mistake of fact under NRS 616C.025(2) because the employee mistakenly believed his leg pain was unrelated to his industrial accident); *Law Offices of Barry Levinson*, 124 Nev. at 362 n.4, 184 P.3d at 383 n.4 (affirming an appeals officer's finding that an employee's untimely notice was excused because she mistakenly believed she suffered a heart attack and was thus unaware of the connection between her injury and her workplace).

And although Mountainview highlights that Fisher failed to complete the required C-4 form until nearly two weeks after the incident, it does not address the appeals officer's finding that this was partially due to its failure to provide the form. *See* NRS 616C.015(4) (providing an employer is responsible for ensuring a "sufficient supply of the forms required" for use for his or her employees); *see also* NAC 616A.480(1)(d) (mandating a copy of the form be provided to the injured employee by the employer). Furthermore, while Mountainview is correct that there is no legal authority holding an employee is excused from providing untimely notice simply because the employee has never filed a workers' compensation claim, it did not submit evidence demonstrating Fisher had notice of the timing requirement either through a poster or employee handbook. *See* NAC 616A.480(1)(a) (mandating the employer display a poster with information

regarding workers' compensation claims). Accordingly, under the facts of this case, substantial evidence supports the appeals officer's finding. *See Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 624, 310 P.3d 560, 564 (2013) ("Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion.").

Mountainview next argues the appeals officer abused his discretion by finding Fisher's injury was a compensable industrial injury because he failed to consider the totality of the circumstances, including Fisher's inconsistent statements and failure to timely seek "industrial treatment." In response, Fisher highlights her own testimony and the medical reports which found her injury was related to the October 19, 2015, incident.

An injured employee seeking workers' compensation pursuant to the Nevada Industrial Insurance Act (NIIA) 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). "An injury occurs within the course of employment when there is a causal connection between the injury and the nature of the work or the workplace." *Fanders v. Riverside Resort & Casino, Inc.*, 126 Nev. 543, 546-47, 245 P.3d 1159, 1162 (2010). Here, Fisher testified that she was performing her job duty by assisting a patient, and while using a hospital provided draw sheet, she felt a pop/pull in her lower back. Fisher further testified that following the incident she felt pain for two days before beginning to experience numbness in her leg. Furthermore, two doctors subsequently opined that her lumbar injury was related to the October 19, 2015, incident. And although Mountainview highlights that a third doctor could not determine whether the injury was related to a workplace accident, we do not reweigh the

competing medical evidence on appeal. *See Quintero*, 116 Nev. at 1183, 14 P.3d at 523 (refusing to reweigh the evidence on appeal). Because the appeals officer's finding is supported by substantial evidence, we necessarily affirm the finding that Fisher's injury is a compensable industrial injury. *See Law Offices of Barry Levinson*, 124 Nev. at 362, 184 P.3d at 383-84 (affirming an appeals officer's causation finding because it was supported by substantial evidence and thus was not arbitrary or capricious).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Tina Talim, District Judge
Michelle L. Morgando, Settlement Judge
Hooks Meng & Clement
Nevada Attorney for Injured Workers/Carson City
Nevada Attorney for Injured Workers/Las Vegas
Eighth District Court Clerk