

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES PANOYAN,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA, AND CAMELBACK
INSULATION,
Respondents.

No. 39285

FILED

JUL 9 2003

WALTER M. BLOOM
CLERK OF THE SUPREME COURT
W. Bloom

ORDER OF AFFIRMANCE

This is an appeal from a district court order, entered on judicial review, affirming an administrative determination¹ that appellant Charles Panoyan was not entitled to retroactive temporary total disability (TTD) benefits.

On March 4, 1997, appellant Charles Panoyan, age fifty-six and employed as an insulation installer, fell off a stack of drywall, landing three to four feet below on a concrete floor. Panoyan filed a claim with EICON seeking compensation for injuries to his knees and heels. EICON found Panoyan had suffered an industrial injury to his right knee and foot and began issuing Panoyan TTD benefits, later sending Panoyan for a PPD evaluation based on a treating physician's release.

On September 17, 1997, Panoyan's treating physician, Dr. Richard Goldstein, notified SIIS that Panoyan had reached maximum medical improvement, had a 2% permanent impairment to the body as a

¹At the inception of these proceedings, the Nevada Industrial Insurance Act (NIAA) was administered by the State Industrial Insurance System (SIIS) and later replaced by Employers Insurance Company of Nevada (EICON). Thus, both SIIS and EICON are referenced in this order.

whole,² and had permanent work restrictions limiting him from standing for long periods of time and engaging in heavy labor. Although Panoyan told Goldstein he felt he was totally disabled from any type of manual labor, Goldstein concluded Panoyan had a “mild impairment” and “supervisory duty and light punch out work” would be consistent with his abilities. Goldstein released Panoyan from treatment and indicated Panoyan could return to work with the appropriate restrictions.

On October 3, 1997, SIIS notified Panoyan of Goldstein’s determinations. SIIS also indicated Panoyan would be referred for vocational rehabilitation, that no further medical compensation benefits were available based on Goldstein’s rating of Panoyan as attaining maximum medical stability, and that Panoyan would be referred for a permanent partial disability rating.

On October 30, 1997, Dr. Kenneth J. Hogan completed Panoyan’s PPD evaluation, concluding Panoyan’s greatest impairment placed him in the category of moderate impairment with an eight percent whole person impairment. Because Panoyan was capable of working, SIIS also terminated TTD payments.

Panoyan, on multiple appeals of EICON determinations, sought additional coverage for injuries to his heels and left knee. The appeals were consolidated, and an appeals officer entered an interim order on July 23, 1998, concluding Panoyan had established that he suffered from bilateral plantar fasciitis and that a medical question existed as to Panoyan’s medical stability for the purposes of obtaining an accurate PPD rating. On June 3, 1999, the parties voluntarily entered a stipulation as

²Following the accident, Panoyan relocated to the state of Florida. Thus, this rating was based on the Florida Impairment Rating Guide.

to Panoyan's outstanding appeals, that Panoyan was medically stable and ratable, and that Panoyan had reached maximum medical improvement, and that the bilateral plantar fasciitis was part of the claim.

Subsequent to the stipulation, doctors Weinberger, Southerland and Kline evaluated Panoyan at EICON's request for the purpose of making an accurate PPD determination. Panoyan also visited his own doctor. The experts disagreed as to the cause of the bilateral plantar fasciitis and Panoyan's continued ability to work.

On December 10, 1999, Panoyan requested retroactive TTD benefits from EICON from October 30, 1997, to the current date and that his treating physician replace EICON's physician. On December 21, 1999, EICON denied Panoyan's request based on documentation of maximum medical status and release from care issued October 30, 1997, which decision was affirmed by a hearing officer. Panoyan appealed, and the appeals officer upheld the determination, concluding: (1) substantial evidence supported a finding that Panoyan had not met his burden of proof demonstrating his inability to work was caused by the industrial injury, (2) substantial evidence supported a finding that Panoyan was medically stable and ratable, (3) because Panoyan had not met his burden of proof, he was not entitled to retroactive TTD benefits, and (4) substantial evidence supported a finding that Panoyan was not entitled to a change of physicians.

Panoyan petitioned for judicial review, and the district court denied the petition, affirming the decision of the appeals officer. Panoyan timely appeals arguing he was entitled to retroactive TTD benefits because his alleged inability to work was caused by the March 4, 1997, industrial accident.

Panoyan argues the appeals officer erred as a matter of law where she allegedly changed a finding of fact previously entered in the interim order of July 2, 1998, by the first appeals officer. Specifically, Panoyan argues in the interim order of July 2, 1998, the appeals officer found the bilateral heel condition to be industrially related. In support of his contention, Panoyan contends he provided valid certificates of disability statutorily entitling him to TTD benefits. Referencing NRS 616C.475(7), Panoyan states TTD benefits shall cease only if a physician determines that the injured employee is capable of gainful employment for which he is suited or where the employer offers the injured employee light or modified duty. Further, Panoyan argues the award of PPD benefits in a disputed case does not prevent this court from ordering retroactive TTD benefits where Panoyan contends the appeals officer erred as a matter of law. Lastly, Panoyan argues the stipulation averring Panoyan was medically stable does not prohibit recovery of retroactive TTD benefits where the parties' voluntary stipulation merely memorialized the facts as Panoyan understood them to exist at the time.

Accordingly, Panoyan argues the appeals officer, in the final appeal, made a new finding of fact as to the scope of the claim where, in denying Panoyan retroactive TTD payments, she concluded the bilateral heel pain was due to non-industrial, preexisting bone spurs, and Panoyan had not overcome the burden of proof demonstrating otherwise, and substantial evidence unanimously supports a finding that his bilateral heel condition is industrially related.

In contrast, EICON argues substantial evidence was adduced to support the appeals officer's decision, and Panoyan has not demonstrated the decision was arbitrary and capricious. We agree.

This court's role in reviewing an administrative agency's decision is identical to that of the district court.³ This court reviews the record to determine whether the agency's decision is supported by substantial evidence.⁴ If it is not supported by substantial evidence, the decision is arbitrary and reversal is warranted.⁵ Substantial evidence is defined as that which "a reasonable mind might accept as adequate to support a conclusion."⁶

Although a district court may review pure legal questions without deference to an agency determination, "the agency's conclusions of law, which will necessarily be closely related to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are supported by substantial evidence."⁷

In the present case, the interim order entered July 23, 1998, clearly states Panoyan did not establish the preexisting right bone spur and left knee complaints were within the scope of the claim. In deciding that a medical question existed as to Panoyan's medical stability, the appeals officer further concluded Panoyan suffered from a "bilateral heel

³Tighe v. Las Vegas Metro. Police Dep't, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994).

⁴NRS 233B.135(3).

⁵Tighe, 110 Nev. at 634, 877 P.2d 1034; see also Rio Suite Hotel & Casino v. Gorskey, 113 Nev. 600, 603, 939 P.2d 1043, 1045 (1997).

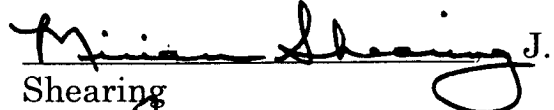
⁶Rio Suite Hotel & Casino, 113 Nev. at 603-04, 939 P.2d at 1045; State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389 (1971)).

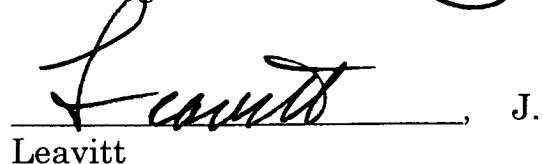
⁷Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986); see also SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993); NRS 233.135(3)(d).


condition diagnosed as traumatic bilateral plantar fasciitis” without reference to causation and ordered an IME. The record is clear and, substantial evidence supports the administrative officer’s determination that additional medical evaluation was ordered for the sole purpose of rendering an accurate PPD rating. Having reviewed the medical evaluations and testimony presented, we conclude the agency’s decision to deny Panoyan retroactive TTD benefits was supported by substantial evidence, was not clearly erroneous or an arbitrary abuse of discretion.⁸

Accordingly, we conclude the district court did not err in denying Panoyan’s petition for judicial review.

ORDER the judgment of the district court AFFIRMED.


Shearing


Leavitt, J.


Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Craig P. Kenny & Associates
Beckett & Yott, Ltd./Las Vegas
Camelback Insulation aka Insulcom Contractors, Inc.
Clark County Clerk

⁸See Collett Electric v. Dubovik, 112 Nev. 193, 196, 911 P.2d 1192, 1195 (1996) (“[a] reviewing court shall not substitute its judgment for that of any agency in regard to a question of fact”); see also Jones, 102 Nev. at 217, 719 P.2d at 806 (“the agency’s conclusions of law, which will necessarily be closely related to the agency’s view of the facts, are entitled to deference, and will not be disturbed if they are supported by substantial evidence”).