IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN RYZNER,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY OF NEVADA,
Respondent.

No. 39827

FILED

AUG 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting judicial review and modifying an appeals officer's determination regarding a claim for additional permanent partial disability. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

In 1993, appellant Stephen Ryzner sustained an injury to his right knee and low back while working as a self-employed realtor. He filed a workers' compensation claim and received medical treatment. In 1997, Dr. Ceylon T. Caszatt performed a permanent partial disability evaluation and determined that appellant had 20% impairment with respect to his right knee and 2% impairment with respect to his low back. Dr. Caszatt recommended claim closure at 12% whole person impairment, concluding that 50% of the 20% right knee impairment was attributable to pre-existing non-industrial causes. Appellant administratively appealed on the basis that the 50% deduction was erroneous. The hearing officer agreed, and eventually the parties stipulated to a permanent partial disability award of 17%, with 15% attributable to the knee impairment and 2% attributable to the low back impairment.

In 1998, appellant filed to reopen his claim based on further deterioration of the right knee and low back. He was evaluated by four

doctors, including Dr. Caszett. Dr. Caszatt determined that, in 1998, there was a total 10% impairment of the knee and 5% impairment of the low back. However, he used the same 50% industrial and 50% non-industrial calculation that he had used in his prior evaluation of appellant's right knee impairment without taking into account the rejection of that calculation and the stipulation of the parties to a 17% whole person impairment. The appeals officer found that Dr. Caszett's medical findings were persuasive and credible and therefore relied on them in making her determination. The appeals officer concluded that since Dr. Caszett found a 15% whole person impairment and appellant had already been determined to have 17% permanent partial disability, he had no additional impairment.

On judicial review, the district court concluded that the appeals officer erred in accepting Dr. Caszett's 1998 10% impairment of the knee rating and in concluding that appellant is not entitled to any additional permanent partial disability award. The appeals officer, the district court and this court are bound by the stipulation of the parties in 1997 establishing right knee impairment at that time at 15% and low back impairment at 2%. Neither Dr. Caszett nor the appeals officer took that stipulation into account. However, the appeals officer expressly relied on Dr. Caszett's medical judgment. Therefore, the district court and this court must accept the appeals officer's determination. It is the prerogative of neither the district court nor this court to substitute its opinion of fact for that of the appeals officer.[1]

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[1]NRS 233B.135; Southwest Gas v. Woods, 108 Nev. 11, 15, 823 P.2d 288, 290 (1992).

Dr. Caszett's medical findings were that appellant had incurred no additional impairment in the knee since the original evaluation, but had incurred an additional impairment of 3% in the low back. Based on these medical findings, the district court concluded that appellant is entitled to an additional 3% impairment for his low back and no additional impairment for his knee as a result of his reopened claim. We agree with the district court's analysis and conclusion. Therefore, we

ORDER the judgment of the district court AFFIRMED.[2]

Becker, C.J.
Becker

Shearing, Sr.J.
Shearing

Agosti, Sr.J.
Agosti

cc: Hon. Allan R. Earl, District Judge
Stephen Ryzner
Beckett & Yott, Ltd./Las Vegas
Clark County Clerk

[2]In response to our August 12, 2002 order regarding the filing fee, appellant submitted a district court order waiving costs. As appellant was granted leave to proceed in forma pauperis, no filing fee is due in this appeal.