

IN THE SUPREME COURT OF THE STATE OF NEVADA

K.B. FRAMERS,
Appellant,
vs.
RICARDO OCHOA,
Respondent.

No. 41389

FILED

NOV 09 2004

ORDER OF REVERSAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a district court order, entered on judicial review, reversing an appeals officer's decision for claim closure. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Respondent Ricardo Ochoa was injured on the job while working for appellant K.B. Framers. Ochoa submitted a workers' compensation claim and received payment for his injury. After Ochoa's treating physician found no evidence of permanent impairment and stated that Ochoa could be released for work without restriction, the claim administrator issued a notice of intention to close Ochoa's file. The hearing officer affirmed the administrator's decision to close Ochoa's file.

On administrative appeal to the appeals officer, Ochoa submitted the opinion of a second physician, Mark Ellis, M.D., who had reviewed Ochoa's medical records and stated that Ochoa may have continuing symptoms. The appeals officer weighed the competing evidence and affirmed the hearing officer's decision. Ochoa petitioned the district court for judicial review, arguing that once he offered Dr. Ellis's opinion, NRS 616C.490(2) mandated that Ochoa undergo a ratings evaluation for permanent partial disability benefits (PPD). The district court granted the petition and reversed the appeals officer's decision.

In reviewing an administrative agency's decision, we are not permitted to "substitute [our] judgment for that of the agency as to the weight of evidence on a question of fact."¹ Our review is limited to whether an agency's final decision contains an "error of law"² or is "[a]rbitrary or capricious or characterized by abuse of discretion"³ that prejudices the petitioner's substantial rights. An abuse of discretion exists when no substantial evidence supports the final decision.⁴ Substantial evidence is evidence that a reasonable person might find is sufficient to support a conclusion.⁵

We must first address the question of whether NRS 616C.490(2) is mandatory and, therefore, determine whether the appeals officer erred when it failed to order a ratings evaluation for Ochoa in light of Dr. Ellis's opinion that Ochoa may have continuing symptoms.

NRS 616C.490(2) provides that an insurer "shall schedule" a ratings evaluation after receiving a physician's report indicating that the claimant "may have suffered a permanent disability and is stable and ratable." The term "shall" is mandatory.⁶ While a ratings evaluation is mandatory under NRS 616C.490(2), the statute is not implicated until the

¹NRS 233B.135(3).

²NRS 233B.135(3)(d).

³NRS 233B.135(3)(f).

⁴Meridian Gold v. State, Dep't of Taxation, 119 Nev. 630, 633, 81 P.3d 516, 518 (2003).

⁵Id.

⁶S.N.E.A. v. Daines, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992).


administrator makes a factual determination as to the claimant's condition. The statute is, therefore, only invoked when the trier of fact makes its determination as to impairment. The statute is inapplicable at the administrative appellate phase.


Here, the administrator found, based on the treating physician's opinion, that Ochoa was not impaired. The hearing officer affirmed the administrator's decision. On appeal to the appeals officer, Ochoa presented an additional medical opinion that stated that Ochoa may have continuing symptoms. The appeals officer assigned greater weight to the opinion of the treating physician. Because there was no finding that Ochoa may have been permanently impaired, the statute does not compel the administrator to schedule a ratings evaluation. Only when the trier of fact accepts the opinion of the expert who states that the claimant may be permanently impaired is the statute invoked and the administrator required to schedule a ratings evaluation. Thus, because Dr. Ellis's opinion was not accepted by the hearing officer, NRS 616C.490(2) does not apply. Therefore, the appeals officer did not err when it failed to schedule a ratings evaluation.


Second, K.B. Framers argues that, because substantial evidence supports the appeals officer's decision, the district court erred when it granted judicial review and reversed the appeals officer's decision. Here, the administrator examined the opinion of the treating physician, who stated that Ochoa did not suffer permanent impairment, and therefore, a ratings evaluation was not necessary. The administrator did not consider Ochoa's second medical opinion, as Ochoa did not introduce the evidence until his appeal to the appeals officer.

As mentioned above, we are not permitted to re-weigh factual evidence or determine the credibility of witnesses. Here, the appeals officer weighed the competing evidence and determined that the treating physician's opinion was more credible in deciding whether Ochoa may be permanently impaired, which would have triggered a mandatory ratings evaluation. The evidence revealed that Dr. Ellis based his opinion solely on his review of Ochoa's medical records and that Dr. Ellis did not personally treat or evaluate Ochoa. Further, Dr. Ellis's opinion fell short of definitively concluding that Ochoa was permanently impaired, instead indicating that Ochoa may have continuing symptoms. Therefore, we agree with K.B. Framers that substantial evidence supports the appeals officer's decision, and consequently, that the district court erred when it granted the petition for judicial review and reversed the appeals officer's decision. Accordingly, we

ORDER the judgment of the district court REVERSED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Mark R. Denton, District Judge
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
Craig P. Kenny & Associates
Clark County Clerk