IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBIN COCHRAN,
Appellant,
vs.
COLORADO HOTEL & CASINO AND CDS COMPFIRST,
Respondents.

No. 41617

FILED

JUL 8 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

This court, like the district court, reviews an appeals officer's decision for clear error or an arbitrary abuse of discretion.[1] Although an appeals officer's legal determinations are independently reviewed, the appeals officer's "conclusions of law . . . are entitled to deference, and will not be disturbed if they are supported by substantial evidence.' Substantial evidence is that 'which a reasonable person might accept as adequate to support a conclusion.'"[2] Nor may we substitute our judgment for that of the appeals officer as to the weight of the evidence on a question of fact.[3] Our review is limited to the record before the appeals officer.[4]

---

[1]Construction Indus. v. Chalue, 119 Nev. 348, __, 74 P.3d 595, 597 (2003) (citations omitted).

[2]Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491-492 (2003) (quoting SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993)).

[3]Horne v. SIIS, 113 Nev. 532, 537, 936 P.2d 839, 842 (1997).

[4]Id. at 536, 936 P.2d at 842.

04-12451

Appellant Robin Cochran argues that the appeals officer's decision was clearly erroneous or arbitrary and capricious. She reasons that her original award of benefits, for an impairment largely determined to have been caused by her industrial injury rather than her pre-existing conditions, conclusively signifies that all future complaints involving her lower back must also relate to the industrial injury unless demonstrably caused by something else. According to Cochran, when disc surgery later became appropriate despite her having incurred no subsequent injury or other intervening cause of her worsening back conditions, her re-opening claim should automatically have likewise been accepted.

However, a claim must be reopened only when a claimant demonstrates that (1) an increase or rearrangement of compensation is necessitated by a change in circumstances, (2) the original claim's injury is the primary cause of the change in circumstances, and (3) a physician certifies that the change in circumstances warrants a change in compensation.[5] The claimant has the burden of proof to show that claim reopening is appropriate by a preponderance of the evidence.[6]

Here, Cochran failed to present any evidence that her later complaints were primarily caused by her original injury. She merely applied for claim reopening and submitted a doctor's report that recommended surgery, but that did not even expressly link her current complaints to her previous injury, much less indicate that they were

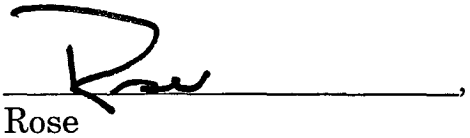
---

[5]NRS 616C.390.

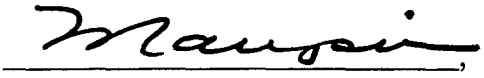
[6]SIIS v. Hicks, 100 Nev. 567, 569, 688 P.2d 324, 325 (1984) (recognizing that a reiteration of the same complaints felt with the original injury, without supportive objective findings, would not support a reopening of the original claim).

caused by the original injury. Further, prior evaluations indicated that she would continue to have pain and worsening back problems related to her pre-existing conditions. Cochran has the burden to prove by a preponderance of the evidence a change in circumstances, caused by her previous injury, that warrants claim reopening. She has failed to do so. Therefore, the appeals officer's decision is neither clearly erroneous, nor an abuse of discretion.[7] Accordingly, we

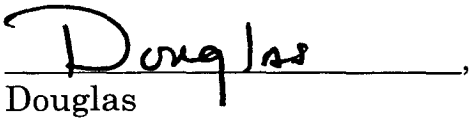
ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Maupin



_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Greenman Goldberg Raby & Martinez
Gugino Law Firm
Clark County Clerk

---

[7]See Langman v. Nevada Administrators, Inc., 114 Nev. 203, 955 P.2d 188 (1998); Horne, 113 Nev. at 539, 936 P.2d at 843 (stating that "'mere possibility' is not sufficient to establish medical causation"); Nevada Indus. Comm'n v. Hildebrand, 100 Nev. 47, 675 P.2d 401 (1984) (recognizing that a claimant seeking permanent disability benefits could not introduce sufficient evidence to compel a disability finding simply through her own assertions).