

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT TROCK,
Appellant,
vs.
LAS VEGAS VALLEY WATER
DISTRICT AND EMPLOYERS
INSURANCE COMPANY OF NEVADA,
Respondents.

No. 42080

FILED

APR 21 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF 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; David Wall, Judge.

On appeal, appellant Robert Trock argues that the appeals officer erred by not following the recommendation of the PPD rating physician. We disagree.

Standard of review

We will not substitute our judgment over that of the administrative agency regarding questions of fact or determinations of credibility.¹ We "must determine whether the agency's decision was clearly erroneous or an arbitrary abuse of discretion."² If substantial evidence exists, we will affirm the agency's decision.³ We have determined that substantial evidence is that which "a reasonable mind might accept

¹McClanahan v. Raley's, Inc., 117 Nev. 921, 925, 34 P.3d 573, 577 (2001); Currier v. SIIS, 114 Nev. 328, 333, 956 P.2d 810, 812-13 (1998).

²Id. at 333, 956 P.2d at 813.

³Id.

as adequate to support a conclusion."⁴ We review questions of law de novo.⁵

In this case, Dr. Acree was appointed, pursuant to NRS 616C.490, to perform a PPD evaluation of Trock. The appeals officer also conducted a hearing and reviewed several doctors' evaluations and their recommendations for Trock's PPD award. Specifically, the appeals officer reviewed reports by Drs. Acree, Dunn, Shannon, and Caszatt. The appeals officer found Dr. Shannon's and Dr. Caszatt's reports more credible and relied on them in finding Trock's injury to be DRE Category I which has a zero percent PPD rating.

Whether the appeals officer may rely on several doctors' reports over the rating physician is a question of law to be reviewed de novo. This court, however, will review an appeals officer's decision to award a zero percent PPD rating when based on substantial evidence.

An appeals officer is not required to follow the rating physician's recommendation for a PPD award

NRS 616C.490

The Legislature enacted provisions that allow an injured employee to receive compensation for a PPD.⁶ Once the insurer receives a report from a doctor "indicating that the injured employee may have suffered a permanent disability and is stable," the insurer must schedule an appointment with a rating doctor to determine the extent of the

⁴Edison Co. v. Labor Board, 305 U.S. 197, 229 (1938), quoted in State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

⁵Currier, 114 Nev. at 333, 956 P.2d at 813.

⁶NRS 616C.490.

disability.⁷ NRS 616C.490(2) further provides that the rating doctor must be chosen at random from a list and that the doctor must determine the percentage of disability from the American Medical Association's Guides to the Evaluation of Permanent Impairment. The statute, however, neither explicitly nor implicitly mandates the appeals officer to follow the selected rating doctor's recommendation.

Rating doctor's recommendation

In Georgeff v. Sahara Hotel, we reviewed a district court's reversal of an appeals officer's decision awarding Georgeff PPD compensation.⁸ Georgeff administratively appealed the insurance company's failure to select a doctor to rate him for a PPD award.⁹ During the appeal, Georgeff obtained a report from Dr. Cedarblade who determined that Georgeff was 6 percent disabled.¹⁰ The insurance company scheduled an examination with Dr. Kudrewicz as required by NRS 616.605(2), now NRS 616C.490; however, Dr. Kudrewicz's report was never submitted to the appeals officer.¹¹ The appeals officer awarded Georgeff a 6 percent PPD award based on Dr. Cedarblade's report.

The district court granted Georgeff's employer's petition for judicial review and reversed Georgeff's 6 percent disability award. We reversed the district court, holding that the district court's decision was

⁷NRS 616C.490(2).

⁸103 Nev. 485, 485-86, 745 P.2d 1142 (1987).

⁹Id. at 487, 745 P.2d at 1143.

¹⁰Id.

¹¹Id.

based on the wrong conclusion "that the appeals officer could make a PPD award only on the basis of a rating conducted by a physician selected by the insurer in the manner stated in [NRS 616C.490]."¹² We further concluded that in the narrow circumstances presented in that case, judicial intervention was not warranted because the award was supported by a rating physician.¹³

Trock's reliance on Georgeff is misplaced. In that case, we determined that since the appeals officer's decision was based on a rating doctor's report, judicial intervention was unnecessary. Here, the appeals officer based her decision on the medical reports of two qualified rating physicians. Trock insists that the appeals officer was required to follow Dr. Acree's report because he was the rating doctor selected pursuant to NRS 616C.490. NRS 616C.490 contains no language mandating the appeals officer to follow the rating doctor's recommendations. Thus, the appeals officer is not bound to follow the report of the rating doctor selected under NRS 616C.490.

In this case, the appeals officer determined that there were several inconsistencies in Trock's medical records and ordered respondent Employers Insurance Company of Nevada (EICN) to pay for a PPD evaluation. Initially, Dr. Acree performed Trock's PPD evaluation. Dr. Acree found that Trock had some difficulty rising from a seated position, but that his lumbar spine had no deformities. Since the injury, Trock complained to Dr. Acree of back pain and stated that he felt good at work, besides pain and stiffness. Dr. Acree concluded that Trock fell into DRE

¹²Id. at 488, 745 P.2d at 1144.

¹³Id. at 489, 745 P.2d at 1145.

Category II for an award of 5 percent of the whole person because Trock's earlier medical records documented muscle guarding and muscle spasms.

After Dr. Acree returned his medical report, Dr. Shannon and Dr. Caszatt reviewed Trock's medical records. Dr. Caszatt noted several inconsistencies regarding Dr. Acree's examination. Dr. Caszatt stated that "[r]ather than relying on historical events as to muscle guarding, guarding must be present at the time of the PPD." Dr. Acree did not report that Trock had any muscle guarding during his examination. Because the American Medical Association's guide stated that complaints or symptoms of pain with no significant clinical findings should receive a zero percent impairment rating, Dr. Caszatt recommended a zero percent PPD rating in Trock's case because there was no objective evidence of any permanent injury.

Dr. Shannon also reviewed the medical records and determined that Dr. Acree's conclusion was inconsistent with Trock's medical records. Dr. Shannon, similar to Dr. Caszatt, recommended a zero percent impairment rating based on Trock's objective clinical examination, rather than his subjective symptoms.

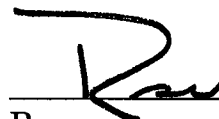
The appeals officer followed the selection procedures as outlined in NRS 616C.490. In rendering her decision, the appeals officer reviewed the reports prepared by Dr. Acree, Dr. Caszatt, Dr. Shannon, and other doctors. The appeals officer also reviewed the testimony of Dr. Dunn, as well as Trock's testimony of his continued pain. The appeals officer found Dr. Caszatt's and Dr. Shannon's reports accurate and persuasive and awarded Trock a zero percent permanent partial disability. The appeals officer properly followed the requirements of NRS 616C.490. Although the appeals officer did not follow the recommendation of the

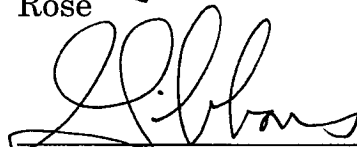
selected rating doctor, there is no requirement under the statute for the appeals officer to do so. The district court properly found substantial evidence supporting the appeals officer's decision.

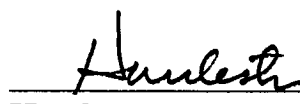
CONCLUSION

The appeals officer's decision was supported by substantial evidence, and this court will not disturb the decision. The appeals officer did not err in examining all the testimony and evidence presented and in following the recommendations of other doctors over the rating doctor's recommendation, as NRS 616C.490 does not require the appeals officer to follow the rating doctor's recommendation. The district court did not err in denying judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. David Wall, District Judge
Greenman Goldberg Raby & Martinez
Beckett & Yott, Ltd./Las Vegas
Smith & Kotchka
Clark County Clerk