

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS R. ELIZONDO,
Appellant,

vs.

HOOD MACHINE, INC., AND
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondents.

No. 52949

FILED

APR 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in a workers' compensation action. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On appeal, appellant challenges the district court's denial of his petition for judicial review, which sought to overturn an appeals officer's decision affirming the denial of appellant's request to reopen his workers' compensation claim. The party seeking to reopen a claim, more than one year after the claim was closed, bears the burden of proving by a preponderance of the evidence that a change of circumstances, primarily caused by the original injury and shown by a physician's or chiropractor's certificate, warrants an increase or rearrangement of compensation. NRS 616C.390(1); Horne v. SIIS, 113 Nev. 532, 536, 936 P.2d 839, 841-42 (1997). There is no dispute that appellant's circumstances have changed since his original injury in 2000 and that there is now evidence of his left inguinal hernia. What is in dispute is whether the 2000 injury is the primary cause of the hernia and whether the certificate of a physician or

chiropractor shows a change of that which would warrants an increase or rearrangement of appellant's compensation.

Because the relevant time frame for determining whether appellant's condition worsened was between the closing of the claim on March 22, 2001, until he made his third request for the claim to be reopened on May 17, 2007, any consideration of medical reports made after this period by the appeals officer would be improper. Ruffner v. SIIS, 113 Nev. 881, 884, 944 P.2d 250, 252 (1997). Accordingly, to the extent that appellant contends that certain medical reports from after May 17, 2007, should have been considered, that argument lacks merit.¹

Additionally, having reviewed the record on appeal, specifically those documents that were properly before the appeals officer, we conclude that substantial evidence exists to support the appeals officer's decision to deny appellant's request to reopen his claim. See Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003) (noting that an appeals officer's decision will be affirmed if it is supported by substantial evidence and the decision is not clearly erroneous or an arbitrary abuse of discretion); Langman v. Nevada Administrators, Inc., 114 Nev. 203, 955 P.2d 188 (1998) (affirming an appeals officer's decision, despite a considerable amount of conflicting evidence, because substantial evidence supported the decision and this court will not substitute its judgment as to the weight of the evidence for that of the administrative

¹Both this court and the district court are limited to reviewing the record as it existed before the administrative agency. Dredge v. State ex rel. Dep't Prisons, 105 Nev.39, 43, 769 P.2d 56, 58-59 (1989).

agency); see also Wright v. State, Dep't of Motor Vehicles, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005) (recognizing that substantial evidence may be inferred from the lack of certain evidence). Here, although the record contains medical evidence confirming the presence of a left inguinal hernia in 2002 and Dr. Susan Ramos opined, in 2002, that the hernia was "related to the original injury," none of the medical reports that were properly before the appeal's officer concluded that appellant's original injury in 2000 was the primary cause of the hernia. See Horne, 113 Nev. at 538-39, 936 P.2d at 843 (concluding that a doctor's belief that "[i]t is entirely possible that there is a causal relationship" between an injury and a newly discovered disorder did not rise to the level of a firm causal connection required by NAC 616.576 to reopen a claim).

Accordingly, we conclude that the district court properly denied the petition for judicial review, and we therefore affirm the district court's decision.

It is so ORDERED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Carlos R. Elizondo
Beckett, Yott & McCarty/Reno
Hood Machine, Inc.
Washoe District Court Clerk