IN THE SUPREME COURT OF THE STATE OF NEVADA

BENTLY NEVADA,

Appellant,

vs.

IRENE STASIAK,

Respondent.

No. 34881

FILED

NOV 13 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Bently Nevada's petition for judicial review of the decision of a Department of Administration appeals officer. The appeals officer determined that respondent Irene Stasiak, a Bently employee who was injured on the job, was permanently and totally disabled under NRS 616C.435(2), the "odd-lot" category. We conclude that Bently's contentions on appeal lack merit and affirm the district court's order.

Bently first contends that the appeals officer erred by failing to determine the level of Stasiak's physical impairment under NRS 616C.490, which sets forth the procedures for determining compensation a claimant can receive for a permanent partial disability ("PPD"). We note, however, that neither NRS 616C.435, which creates the permanent total disability ("PTD") category, nor any other provision of the industrial insurance benefits chapter requires that the administrative judicial officer engage the PPD procedures in making a PTD determination. We so held in Rosser v. SIIS,[1] a case in which SIIS argued similarly that "permanent total disability awards . . . should be determined in the same manner as permanent partial disabilities."[2] In rejecting this argument, we concluded that the legislature intentionally omitted the particular PPD procedures at issue in that case from the PTD determination.[3] Likewise, here we

[1]113 Nev. 1125, 946 P.2d 185 (1997).

[2]Id. at 1130, 946 P.2d at 189.

[3]Id. at 1132, 946 P.2d at 189-90.

01-19283

conclude that, although the administrative judicial officer must find that the claimant has suffered a physical impairment to determine a PTD, the administrative officer need not employ the PPD procedures to do so. Here, the appeals officer properly concluded that Stasiak had suffered a physical impairment; in particular, Stasiak had suffered nerve damage and severe continuing pain.

Bently next contends that the appeals officer abused her discretion by relying on the testimony and report of Nancy Lee, Ph.D., a therapist licensed in marriage and family therapy but not licensed to practice psychology as that practice is defined by statute. There is, however, substantial evidence in the record to support the appeals officer's conclusion that Dr. Lee's assessment and treatment of Stasiak were within Dr. Lee's area of training and expertise. We also note that, in weighing Dr. Lee's opinions, the appeals officer properly considered the fact that Dr. Lee was not licensed to practice psychology. In any event, it seems ironic that Bently should now challenge Dr. Lee's qualifications in view of the fact that CMS, Bently's workers' compensation administrator, referred Stasiak to Dr. Lee for assessment and treatment.

Finally, Bently contends that substantial evidence does not support the appeals officer's decision because the "vast number of neurologists and pain specialists who have examined [Stasiak] can find no evidence of the neuropathy." We disagree. For purposes of our review, even assuming that the majority of examining and treating practitioners concluded in Bently's favor, it is sufficient that some of them concluded that Stasiak had suffered painful and permanent nerve damage that was severe enough to place her in the PTD category considering – in addition to her physical impairment – her age, education, and ability to obtain suitable employment. We will not reweigh the evidence.[4]

We conclude that Bently's contentions lack merit. Accordingly we,

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[4]See NRS 233B.135(3).

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. William A. Maddox, District Judge
McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP
Anderson & Gruenewald
Carson City Clerk