

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROUND TABLE PIZZA; AND CANNON
COCHRAN MANAGEMENT SERVICES,
INC.,
Appellants,
vs.
CARMEN HALL,
Respondent.

No. 56680

FILED

APR 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of an administrative decision in a workers' compensation matter. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Respondent Carmen Hall sustained an industrial injury in January 2007 during her employment with appellants. Hall was designated as temporarily totally disabled (TTD) for four days immediately following the injury, then released to light-duty work. Hall continued to be treated for her injury and was on light-duty work until appellants terminated Hall's employment on March 23, 2007, for alleged violations of company policies. The following month, appellants' workers' compensation administrator denied Hall's request for TTD benefits due to her "self-termination" from employment. The hearing officer reversed the administrator's decision in part, finding Hall's workers' compensation claim to be compensable, and affirmed in part as to the decision to deny TTD benefits. Starting in September 2007, Hall was declared as TTD by her treating physician. It was anticipated that Hall would be released to

light-duty work on March 28, 2008, and based on this, the administrator determined that Hall was not entitled to TTD benefits because she had been terminated for cause. Hall's claim for all benefits was closed on October 17, 2008. The appeals officer reversed the administrator and hearing officer's decisions and ordered appellants to provide Hall with TTD benefits retroactively and prospectively until she was released to full-duty work. Appellants then filed a petition for judicial review, which the district court denied. This appeal followed.

On appeal, appellants first contend that the appeals officer's decision is clearly erroneous based on the evidence in the record. Having considered the parties' arguments and reviewed the record, we conclude that appellants' argument is without merit, as substantial evidence, including physician reports and Hall's testimony, supports the appeals officer's determination that Hall suffered an industrial injury in the course and scope of her employment and was thus entitled to TTD benefits.¹ Langman v. Nevada Administrators, Inc., 114 Nev. 203, 209, 955 P.2d 188, 192 (1998) (providing that this court will not substitute its judgment regarding the weight or credibility given to evidence and testimony); see also Vredenburg v. Sedgwick CMS, 124 Nev. 553, 557 n.4, 188 P.3d 1084, 1087 n.4 (2008) (holding that substantial evidence is that which a reasonable person could accept it as adequately supporting a conclusion).

¹Although appellants assert that the use of back-dated disability opinions is barred by statute, the statute governing disability certification requires only that a physician certify or specify the period and description of the worker's limitations, and whether the disability is permanent or temporary. NRS 616C.475(7). An appeals officer may request additional examinations to supplement the record if there is a dispute concerning the injured employee's condition. NRS 616C.360.

Because substantial evidence supports such findings and there is no “clear error or an arbitrary abuse of discretion,” we do not overturn the determination. Day v. Washoe County Sch. Dist., 121 Nev. 387, 389, 116 P.3d 68, 69 (2005) (citing Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003)).

Appellants also argue that the appeals officer erred by not determining whether Hall was terminated for cause, as such a finding may preclude an award of TTD benefits. While this court reviews pure issues of law in an administrative decision de novo, when the conclusions of law are closely related to the agency’s view of the facts, they will not be disturbed if supported by substantial evidence. See SIIS v. Khweiss, 108 Nev. 123, 126, 825 P.2d 218, 220 (1992). If the agency fails to make a necessary finding of fact, we “may imply the necessary factual findings,” so long as the agency’s conclusion itself provides a proper basis for the implied finding. State, Dep’t of Commerce v. Soeller, 98 Nev. 579, 586, 656 P.2d 224, 228 (1982).

Termination for cause does not automatically forfeit a claimant’s right to all industrial insurance benefits. Hudson v. Horseshoe Club Operating Co., 112 Nev. 446, 456-57, 916 P.2d 786, 792 (1996) (holding that termination for cause is relevant in an industrial injury case “only if the evidence shows that [the termination], rather than the injury, caused the employee’s inability to secure subsequent work”).² The appeals

²Both parties concede that NRS 616C.232, which provides the current standard for whether an insurer may deny disability benefits because of termination for misconduct, was enacted after Hall’s termination and while her claim was pending, and because it changes substantive rights, it does not apply here. See Pressler v. City of Reno, 118 Nev. 506, 511, 50 P.3d 1096, 1099 (2002) (“We have previously

officer did not expressly determine whether Hall's injury, rather than her termination, caused her inability to secure subsequent work, but she did find that Hall was entitled to TTD benefits for her industrial injury until such time as she is released back to full duty employment.³ This conclusion provides a proper basis to imply the finding that Hall's industrial injury prevents her from securing any subsequent work because she was certified as completely unable to work at the time of the hearing, and was thus entitled to benefits. Id. (holding that termination for misconduct is not dispositive to a TTD benefit claim, but declining to reach the issue on the merits because the employer agreed to pay TTD benefits), relying on Arizona DPS v. Industrial Com'n, 861 P.2d 603, 607-08 (Ariz. 1993), overturned by legislative action 2009 Ariz. Legis. Serv. Ch. 184 (affirming disability benefits for an employee terminated for misconduct when he could not secure suitable employment with another employer because of his disability); Marsolek v. George A. Hormel Co., 438 N.W.2d 922, 924 (Minn. 1989) (holding that if "it has become demonstrable that the employee's work-related disability [and not the termination] is the cause of the employee's inability to find or hold new employment," then the employee's wage loss benefits will be reinstated). This determination

concluded that when the Legislature does not state otherwise, statutes have only prospective effect."); Valdez v. Employers Ins. Co. of Nev., 123 Nev. 170, 179-80, 162 P.3d 148, 154 (2007) (holding that a statute that does not change substantive rights but instead relates solely to remedies and procedure will be applied to any cases pending when it is enacted).

³The record also indicates that appellants provided respondent with TTD benefits from September 2007 to March 2008, and terminated the benefits in anticipation of respondent being released to light-duty work on March 28, 2008, which did not actually occur as anticipated.

is closely related to the appeals officer's view of the facts and is supported by substantial evidence, and we conclude that it is not clearly erroneous. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Doug Smith, District Judge
Paul H. Schofield, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Benson, Bertoldo, Baker & Carter, Chtd.
Eighth District Court Clerk