

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN J. IWANISZEK,  
Appellant,  
vs.  
SILVER STATE MATERIALS; AND S &  
C CLAIMS SERVICES, INC.,  
Respondents.

No. 60023

**FILED**

NOV 14 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
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 matter. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellant was employed as a truck driver for respondent Silver State Materials when he injured his left wrist in 2007. Respondent S & C Claims Services, Inc., the insurer, accepted the claim for left wrist sprain. Appellant had surgery on his left wrist and approximately seven months later, he was released to full duty work without restrictions. Appellant accepted a lump sum permanent partial disability award, and his claim was closed in January 2008. After his left wrist claim was closed, appellant injured his right wrist, and the insurer accepted a second claim for this injury. Under his right wrist claim, appellant received vocational rehabilitation benefits, but these benefits were revoked after appellant did not attend the vocational program pursuant to the agreement.

Appellant then sought temporary disability benefits and vocational rehabilitation benefits under his prior left wrist claim. The insurer denied this request because the left wrist claim was closed and appellant had been released to full duty work following treatment for the left wrist injury. A hearing officer affirmed the denial. The appeals officer also affirmed the denial, concluding that appellant had not shown a change in circumstances sufficient to reopen the claim for additional benefits, and that even if the claim was reopened, appellant had not shown that he was entitled to vocational rehabilitation benefits because he had been released to full duty work without restrictions after his left wrist injury. Appellant filed a petition for judicial review, which the district court denied. This appeal followed. On appeal, appellant argues that the district court erred in denying judicial review because there had been a change in the permanent restrictions on appellant's left and right wrists, as supported by a doctor's report. Appellant also argues that the appeals officer improperly considered medical treatment he received after he sought reopening.


Having reviewed appellant's appeal statement and the record on appeal, we conclude that the appeals officer's denial of appellant's request to reopen the left wrist claim to receive vocational rehabilitation benefits did not constitute clear error or an abuse of discretion. *See Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087-88 (2008) (setting forth the standard of review on judicial review). Judicial review is confined to the record before the appeals officer, and we will not disturb the appeals officer's factual findings on judicial review if they are supported by substantial evidence. *See id.* "Substantial evidence is


evidence that a reasonable person could accept as adequately supporting a conclusion.” *Id.* at 557 n.4, 188 P.3d at 1087 n.4 (internal quotation omitted).

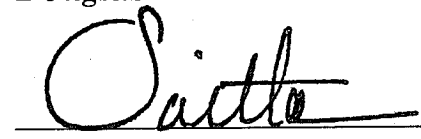
Here, appellant was released to full duty work without restrictions after he received treatment for his left wrist injury. The record shows that he did not receive additional treatment or any recommendation for further treatment for his left wrist after the claim pertaining to his left wrist was closed. While the record indicates that a permanent lifting restriction was imposed after appellant’s right wrist injury, the evidence in the record does not demonstrate a change in circumstances primarily caused by appellant’s left wrist injury so as to warrant the reopening of appellant’s left-wrist-based claim for further benefits. *See* NRS 616C.390(1) (setting forth the requirements for claim reopening); *Day v. Washoe Cnty. Sch. Dist.*, 121 Nev. 387, 388, 116 P.3d 68, 68 (2005) (noting that claim reopening is available “when the original injury is the primary cause of a worsening of the industrial condition”); *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). As this court will not substitute its judgment for that of the appeals officer regarding the weighing of evidence on any question of fact, *Langman v. Nev. Adm’rs, Inc.*, 114 Nev. 203, 210, 955 P.2d 188, 192 (1998), and substantial evidence in the record supports the appeals officer’s determination, we conclude that the appeals officer did not commit error or an abuse of discretion in refusing to reopen appellant’s left wrist claim. *See Vredenburg*, 124 Nev. at 557, 188 P.3d at

1087-88. Accordingly, we affirm the district court's order denying appellant's petition for judicial review.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Nancy L. Allf, District Judge  
Stephen J. Iwaniszek  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk