IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASABLANCA RESORT; AND NELSON DAVISON ADMINISTRATORS, INC.,
Appellants,
vs.
JESUS BOTELLO,
Respondent.

No. 67788

FILED

DEC 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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 matter. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Respondent, an employee of appellant Casablanca Resort, pushed 300 to 400 pound linen carts between hotel rooms as part of his job duties. While attempting to turn a linen cart around a corner one day, respondent heard a popping sound in his knee and instantly felt sharp pains, requiring him to seek help from another employee close by. After filling out an incident report, which included a statement by respondent that he aggravated an old injury,[1] he proceeded to see a physician. The first doctor respondent saw took an x-ray of respondent's knee, but saw no broken bones. After the pain did not subside, respondent saw a second doctor who took an MRI and found that respondent had torn the meniscus in his right knee.

After the accident, respondent filed a workers' compensation claim, which appellants denied. Respondent appealed that denial to the

[1]Approximately 30 years prior to the instant accident, appellant had a metal rod implanted due to a broken femur he received in a car accident.

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Department of Administration, Hearings Division, and a hearing officer affirmed the claim denial, but the appeals officer later reversed that decision, finding that respondent's injury was compensable. Appellants then filed a petition for judicial review in the district court, which was denied. This appeal followed.

On appeal, appellants argue that the appeals officer's determination that respondent's injury was compensable and the district court's subsequent denial of judicial review of that decision must be reversed because respondent failed to prove the existence of a compensable injury. Specifically, appellants state that respondent failed to provide testimony or evidence that a physician believed to a reasonable degree of medical certainty that respondent's condition was caused by the industrial injury, citing *United Exposition Service Co. v. State Industrial Insurance System*, 109 Nev. 421, 851 P.2d 423 (1993). Without such evidence, appellants assert that the appeals officer's decision is not supported by substantial evidence, and, therefore, must be reversed. Respondent contends that the appeals officer's decision was supported by substantial evidence and therefore not clearly erroneous because he submitted ample evidence for the appeals officer to conclude that his injury was compensable in the form of medical reports and his own testimony.

When reviewing agency decisions regarding workers' compensation issues, this court, like the district court, reviews the matter for clear error or an abuse of discretion. *See Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008). Additionally, we defer to the appeals officer's fact-based conclusions of law, so long as they are supported by substantial evidence. *See id.* "Substantial evidence exists if a reasonable person could find the evidence adequate to support

the agency's conclusion . . . ." *Law Offices of Barry Levinson v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008).

Although appellants argue that respondent failed to meet his burden of demonstrating that he suffered a compensable injury because he did not present medical expert testimony that his injury was believed, to a reasonable degree of medical certainty, to be caused by the industrial injury, that is not the only way for respondent to meet this burden. *United Exposition* provides that a claimant may also meet this burden by showing sufficient facts "so that the trier of fact can make the reasonable conclusion that the condition was caused by the industrial injury." 109 Nev. at 425, 851 P.2d at 425. We conclude that respondent met this burden.

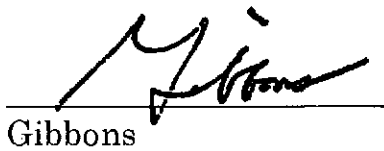
The record on appeal demonstrates that respondent testified before the appeals officer that he heard his knee pop and experienced pain as he tried to turn a corner pushing the linen cart, that immediately thereafter he was unable to push the cart and could barely walk to find help, and that he can no longer push the linen carts since the accident. This testimony in and of itself would be substantial evidence for the appeals officer to reasonably conclude that the condition was caused by the industrial injury, *see id.*, because the pain and disability occurred contemporaneously with the industrial injury. Respondent provided more than just testimony, however. He also provided medical records wherein he was found to have a meniscus tear with tenderness at the site. Thus, because there is substantial evidence in the record to support the appeals officer's decision, the decision was not clear error or an abuse of discretion. *See Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087. As a result, the district court properly denied appellants' petition for judicial review.

Moreover, an independent basis for affirming the district court's denial of judicial review exists in the form of appellants' failure to

provide this court with an adequate record on appeal. It is well established that "appellants are responsible for making an adequate appellate record." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007); *see also* NRAP 30(b)(3) (providing that an appellant's appendix "shall include . . . any . . . portions of the record essential to determination of issues raised in appellant's appeal"). Here, appellants failed to provide this court with any of the briefing on the petition for judicial review,[2] leaving us unable to determine what arguments were presented before the district court. Without these briefs, "we necessarily presume that the missing portion [of the record] supports the district court's decision." *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

Accordingly, for the reasons discussed above, we affirm the district court's denial of appellants' petition for judicial review.

It is so ORDERED.



_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Jerry A. Wiese, District Judge
Janet Trost, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
The Law Offices of James J. Butman
Eighth District Court Clerk

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[2]Appellants did include the initial petition for judicial review in their appendix, but the petition merely stated that appellants were seeking judicial review and only gave a one sentence summary of appellants' legal arguments.