IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLAIRE ARMSTRONG,
Appellant,
vs.
TREASURE ISLAND HOTEL/CASINO; AND YORK RISK SERVICES GROUP, INC.,
Respondents.

No. 80461-COA

FILED

MAY 25 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Claire Armstrong appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

In December 2015, Armstrong was working at Treasure Island Hotel and Casino as a "Slot Supervisor," when she bent down to fill a kiosk and felt her knee give out.[1] Armstrong filed a workers' compensation claim, received medical treatment, and eventually underwent knee surgery for a medial meniscal tear, which was deemed an industrial injury. Armstrong's surgery successfully repaired the meniscal tear, but she continued to have pain in her left knee.

After reaching maximum medical improvement, Armstrong was entitled to receive a Permanent Partial Disability (PPD) rating. Accordingly, she was examined and evaluated by a rating chiropractor, as required by NAC 616C.490(1). After the examination, the chiropractor opined that Armstrong had a PPD rating of one percent due to her industrial injury—i.e., her torn meniscus. The chiropractor also determined that Armstrong had a PPD rating of ten percent, resulting from her

[1]We do not recount the facts except as necessary for our disposition.

preexisting osteoarthritis, which was documented by her MRI and revealed a "one mm cartilage interval." Thus, the examination established that the preexisting degenerative arthritis and the torn meniscus were discrete, unrelated injuries. Ultimately, the chiropractor determined that the primary cause of Armstrong's "persistent left knee pain" was her "pre-existing nonindustrial degenerative joint disease" and that she only qualified for a one percent PPD rating—the percentage directly linked to her industrial injury.

Based on the chiropractor's report, York Risk Services Group (York), on behalf of Treasure Island, offered Armstrong compensation based on a one percent PPD rating. Dissatisfied with the offer, Armstrong appealed and proceeded through the administrative process. After reviewing Armstrong's medical records, a hearing officer affirmed the one percent PPD rating. An appeals officer also affirmed the rating. Subsequently, the district court denied Armstrong's petition for judicial review, determining that the appeals officer's determination and order was supported by substantial evidence. This appeal followed.

Armstrong argues that the district court erred in denying her petition for judicial review because the appeals officer's determination of the PPD rating was based on a clear error of law or was otherwise arbitrary and capricious.

An appellate court's role in reviewing an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). The appellate court, therefore, gives no deference to the district court's decision. *Id.*

While an administrative agency's legal conclusions are reviewed de novo, *State Dep't of Taxation v. Masco Builder Cabinet Grp.*,

127 Nev. 730, 735, 265 P.3d 666, 669 (2011), its factual findings are reviewed for clear error or an abuse of discretion, *Taylor v. Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). Further, if the agency's conclusions of law are closely related to the facts and are not based on the construction of a statute, we will defer to those conclusions. *See Harrah's Operating Co. v. State Dep't of Taxation*, 130 Nev. 129, 132, 321 P.3d 850, 852 (2014).

Here, multiple doctors evaluated Armstrong and concluded that her meniscal tear was an industrial injury, and that her preexisting condition, osteoarthritis of the left knee, was separate and distinct from the industrial injury and apportionment was proper. The rating chiropractor properly utilized the American Medical Association Guides to the Evaluation of Permanent Impairment (Guides) to determine Armstrong's apportioned PPD rating. *See* NRS 616A.040; NAC 616C.002(1). The chiropractor concluded that based on the Guides, Armstrong's industrial injury warranted a one percent PPD rating and that her preexisting osteoarthritic condition documented by the "one millimeter cartilage interval," warranted a ten percent PPD rating. The rating chiropractor further determined that Armstrong's industrial injury was separate and distinct from her preexisting condition. Therefore, Armstrong was entitled to the full one percent PPD award for the industrial injury she sustained with nothing deducted for the preexisting condition. Likewise, she was not entitled to recover any of the ten percent PPD award for her preexisting condition based on the industrial injury being wholly unrelated.

Nevertheless, Armstrong contends that the appeals officer's determination was improper as a matter of law because she was entitled to the total PPD award of eleven percent, which should not have been reduced

by apportionment pursuant to NAC 616C.490. Specifically, Armstrong argues that because there is no documentation predating her industrial injury demonstrating the extent of any impairment related to her preexisting arthritic condition of the knee, any apportionment between the industrial injury and the non-industrial injury is invalid under NAC 616C.490(6) and (8). We disagree and conclude that the appeals officer's determination was proper as a matter of law.

"When the text of a statute is plain and unambiguous, a court should impart it with ordinary meaning and not go beyond that meaning." *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006). When interpreting multiple provisions, this court must read the provisions in harmony, unless it is clear the Legislature intended otherwise. *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989). These rules of statutory construction also apply to administrative regulations. *Silver State Elec. v. State, Dep't of Tax*, 123 Nev. 80, 85, 157 P.3d 710, 713 (2007).

Apportionment is required when the employee's current impairment is due in part to both a preexisting condition and an industrial injury. NAC 616C.490(1), (2). When an employee has such an impairment, the rating physician or chiropractor is required to conclude which portion of the impairment is attributable to the industrial injury and which portion of the impairment is attributable to the preexisting condition, resulting in an apportioned rating. *See* NAC 616C.490(1), (2).

Here, because Armstrong's overall impairment was due to both a preexisting condition and an industrial injury, apportionment was required. Armstrong's physicians therefore apportioned one percent to the industrial injury and ten percent to the preexisting condition. According to

Armstrong's physicians, her osteoarthritis did not cause or contribute to her continued left knee symptomology, and there is no medical evidence in the record to suggest otherwise. Thus, the rating chiropractor correctly determined that apportionment was proper because ten percent of the impairment was wholly derivative of Armstrong's preexisting condition. Based on this conclusion, Armstrong was not entitled to an eleven percent rating, but rather only the one percent that was attributable to her industrial injury.

Therefore, we conclude that the appeals officer's determination is not a clear error of law or an abuse of discretion. *See Pub. Agency Comp. Tr. v. Blake*, 127 Nev. 863, 868, 265 P.3d 694, 697 (2011) (providing that "[w]orkers' compensation is meant to compensate for the *actual impairment* to the worker caused by an industrial injury," rather than any preexisting conditions which are discrete and insular from the industrial injury (emphasis added)).

Additionally, Armstrong argues that the district court erred in denying her petition for judicial review, as there was not sufficient evidence to support the award. Treasure Island and York argue that the appeals officer's determination was supported by substantial evidence in light of the medical evidence presented. We agree with Treasure Island and York.

It is well recognized that this court, in reviewing an administrative agency decision, will not substitute its judgment for that of the agency. *State, Dep't of Motor Vehicles v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991). The central inquiry is whether substantial evidence in the record supports the agency decision. *State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 87-88, 787 P.2d 408, 409 (1990). Substantial evidence is that "which a reasonable mind might accept as adequate to

support a conclusion." NRS 223B.135(4); *see also Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 331, 849 P.2d 267, 270 (1993).

Here, multiple doctors opined that Armstrong had a medial meniscal tear, that this tear was related to her industrial accident, and that Armstrong had met maximum medical improvement for this injury following surgery. Further, multiple doctors opined that Armstrong had osteoarthritis which was preexisting and separate from the industrial injury, and was likely the cause of her continued left knee complaints following the successful repair of the meniscus tear. Additionally, the ratings chiropractor used the correct Guides, as required by both statute and regulation, for the rating evaluation for Armstrong's industrial injury as well as for her preexisting condition.

Although Armstrong agreed with the total PPD of eleven percent, she did not present any competing medical testimony that her preexisting condition was exacerbated by the industrial injury she sustained.[2] And, there is no such evidence present in the record on appeal. Indeed, as stated above and in the rating evaluation, only one percent of that total evaluation was found to be related to her industrial injury, and the medical evidence in the record supports the PPD award of one percent.[3]

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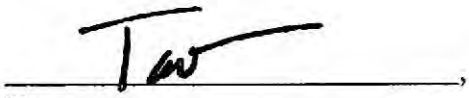
[2]Although Armstrong was not required to present testimony of a different overall PPD (as she agrees with the eleven percent), without medical evidence of what percentage (beyond the one percent) was in any way attributable to the industrial injury, further apportionment is not required.

[3]To the extent that Armstrong argues that apportionment was improper under NAC 616C.490(6) because there is no prior documentation predating the industrial accident demonstrating the preexisting impairment, we find this argument unpersuasive. The phrase "which existed before the industrial injury" in NAC 616C.490(6) does not refer to

Therefore, we conclude that the district court did not err in denying the petition for judicial review and accordingly,

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



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cc: Hon. Gloria Sturman, District Judge
Kemp & Kemp
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

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the documentation, but rather the impairment. *See Ransier v. State Indus. Ins. Sys.*, 104 Nev. 742, 744 n.1, 766 P.2d 274, 275 n.1 (1988) (construing a regulation containing the same phrase as NAC 616C.490(6)). As such, NAC 616C.490(6) does not require "historical documentation" or any documentation which predates the industrial injury, but instead requires documentation concerning the scope and nature of the impairment, that can be established from the examination of the industrial injury. *Id.* Further, because multiple doctors determined that the degenerative arthritis and the meniscal tear were distinct and unrelated, and that the degenerative arthritis predated the industrial injury, such opinions were sufficient to document the scope and nature of the impairment as required under the regulation. *See id.*