

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTORIA MONROE,
Appellant,
vs.
ROBINSON MINE; AND AIG CLAIMS
SERVICES,
Respondents.

No. 81541-COA

FILED

SEP 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Victoria Monroe appeals from a district court order denying a petition for judicial review in a workers' compensation matter. First Judicial District Court, Carson City; James E. Wilson, Judge.

Monroe was employed at respondent Robinson Mining Company (Robinson) when she injured her back at work.¹ Robinson's insurance carrier, respondent AIG Claims Services (AIG), accepted Monroe's workers' compensation claim. While receiving treatment for her injury, Monroe moved to Seattle, Washington. Monroe informed AIG that she sought payment for permanent partial disability (PPD) instead of transferring her treatment to Seattle. So, in 2013, Monroe accepted a 12% PPD lump sum. And AIG closed Monroe's claim.

In 2017, Monroe requested AIG to reopen her claim because she was experiencing lower back discomfort, pain, and disability without any new back injury. Monroe collected reports from her doctors in Seattle that supported reopening her claim and submitted them to AIG. However, AIG denied the request, opining that the evidence did not support reopening Monroe's claim. Monroe appealed AIG's decision to a hearing officer. The

¹We do not recount the facts except as necessary to our disposition.

hearing officer ordered the claim to be reopened under medical investigation. AIG ordered Monroe to undergo an independent medical evaluation (IME), and Dr. Daniel Lee was assigned to, and performed, the IME. Dr. Lee's report found that Monroe's current injuries were not related to her prior claim. Upon receiving Dr. Lee's report, AIG denied Monroe's claim a second time. Monroe appealed the AIG's denial to a hearing officer. Weighing the evidence, the hearing officer affirmed the denial. Monroe then appealed the hearing officer's decision to an appeals officer.

In front of the appeals officer, Monroe filed a motion for discovery to determine if Dr. Lee was biased. The appeals officer granted the motion. Monroe then requested Dr. Lee to produce all previous IME reports that he had prepared over 15 years. The appeals officer subsequently issued a clarified order denying the production of the IME reports as overbroad. The clarified order directed Monroe to depose Dr. Lee to investigate her allegations of bias. After the deposition of Dr. Lee, Monroe submitted her evidence to the appeals officer to reopen her claim.

The appeals officer affirmed the denial of reopening Monroe's claim, giving more weight to Dr. Lee's report in support of the denial. The appeals officer also found that Monroe's expert reports were unreliable and did not show an objective change linked to her prior work injury. Monroe petitioned the district court for judicial review of the appeals officer's decision. After the district court denied her petition, Monroe appealed to this court.

Standard of Review

Our review of an administrative agency's decision is identical to that of the district court. NRS 233B.135(3); *Elizondo v. Hood Mach., Inc.*, 139 Nev. 780, 784, 312 P.3d 479, 482 (2013). We "evaluate the agency's decision for clear error or an arbitrary and capricious abuse of discretion"

and defer to an agency's findings of fact and "fact-based conclusions of law" if they are supported by substantial evidence. *Law Offices of Barry Levinson v. Miko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion." *Id.* at 362, 184 P.3d at 384; *see also* NRS 233B.135(3)-(4). If an appeals officer's decision goes beyond factual findings, and includes statutory interpretation, this court reviews that portion of the decision de novo. *Star Ins. Co. v. Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 509-10 (2006); *see also Constr. Indus. v. Chalue*, 119 Nev. 348, 351, 74 P.3d 595, 597 (2003).

The appeals officer did not misinterpret NRS 616C.390 and substantial evidence supports the appeals officer's decision to deny reopening Monroe's claim

Monroe contends the appeals officer misinterpreted NRS 616C.390 by requiring that a certifying physician recommending reopening a claim to be "familiar" with Nevada law. Monroe further argues that because of this misinterpretation, the appeals officer did not properly weigh the evidence presented by her physicians recommending reopening. We disagree.

In Nevada, a workers' compensation claim may be reopened when: (1) a change in circumstance warrants reopening, (2) "clear and convincing evidence" establishes that the primary change of circumstance is the original injury, (3) an application to reopen is accompanied by a certificate of a physician or chiropractor that shows the change in circumstance, and (4) the evidence establishes an objective change in the medical condition of the claimant. NRS 616C.390(1)(a)-(c), (4)(a)-(b); *see also United Exposition Serv. Co. v. SIIS*, 109 Nev. 421, 851 P.2d 423 (1993).

Here, the appeals officer weighed all of the reports under the statutory standards. For example, the appeals officer found that the reports submitted by Monroe were unreliable and did not show how her current condition was related to her previous work-related injury or establish an objective change in her condition. Thus, after analyzing Monroe's expert reports and Dr. Lee's IME report, the appeals officer found that the claim should not be reopened. Substantial evidence supports these findings. And, because we defer to the appeals officer's findings of fact and fact-based conclusions of law so long as they are supported by substantial evidence, we decline to consider Monroe's statutory interpretation argument further.

The appeals officer did not err in denying Monroe's request for discovery

Monroe contends that the appeals officer committed reversible error by violating NRCP 26 and NRS 233B.135(a) in denying her discovery requests for all of Dr. Lee's previous IME reports. Monroe further argues that she is entitled to the reports to demonstrate Dr. Lee's bias against her. We are not persuaded by that argument.

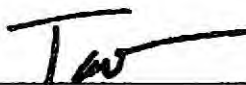
To begin, the Nevada Rules of Civil Procedure do not apply to administrative proceedings. *See Dutchess Bus. Serv., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 713, 191 P.3d 1159, 1167 (2008); *see also* NRCP 1 ("These rules govern the procedure in all civil actions and proceedings in the district courts."). In a proceeding before an administrative agency, discovery is determined by the procedures of that agency. *See* NRS 233B.040(1) (authorizing administrative agencies to adopt "reasonable regulations" to aid in carrying out their duties). Nonetheless, due process guarantees that fundamental fairness apply to administrative proceedings. *Dutchess Bus. Serv., Inc.*, 124 Nev. at 714, 191 P.3d at 1168; *see also Bivins Constr. v. State Contractors' Bd.*, 107 Nev. 281, 283, 809 P.2d 1268, 1270

(1991). Thus, so long as there are procedural safeguards protecting the litigant's guarantee of fairness, the administrative agency's decision will be upheld. *Dutchess Bus. Serv., Inc.*, 124 Nev. at 714, 191 P.3d at 1168.

Here, although the appeals officer ruled that Monroe's request for all of the IME reports that Dr. Lee had conducted over 15 years was overbroad, the officer allowed Monroe to depose Dr. Lee. During the deposition, Monroe had the opportunity to question Dr. Lee about any bias or prejudice he may hold. Thus, the appeals officer afforded Monroe a fair procedure to investigate her allegations of Dr. Lee's bias. Therefore, we cannot agree that it was reversible error to deny Monroe's discovery request because she was still afforded a fair discovery procedure. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James E. Wilson, District Judge
Nevada Attorney for Injured Workers/Carson City
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Carson City Clerk