

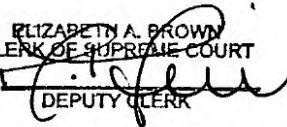
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAILESLASSIE GODIFAY,
Appellant,
vs.
VLS LLC, EMPLOYER; AND LIBERTY
MUTUAL, INSURER FOR THE
EMPLOYER,
Respondents.

No. 84162-COA

FILED

DEC 23 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Haieslassie Godifay 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 2014, Godifay worked as a limousine driver for respondent VLS LLC.¹ In the course of his employment, he was involved in an automobile accident when an intoxicated driver rearended the limousine he was driving. Godifay's head hit the steering wheel before bouncing back and colliding with the headrest. He temporarily lost consciousness and was transported to the hospital for treatment. He was discharged from the hospital after receiving several negative CT scans and X-rays.

Godifay experienced persistent pain after the accident and was evaluated by Dr. Francis who diagnosed Godifay with a lumbar strain with associated left lumbar radiculitis. In March 2015, Godifay received an MRI that revealed a symmetric diffuse disc bulge measuring 2 mm at L5-S1. Godifay was advised to receive a L5-S1 TFFESI (transforaminal lumbar epidural steroid injection, an injection of anti-inflammatory medication into

¹We recount facts only as necessary for our disposition.

the epidural space). He did not receive the injection because it was not covered by his workers' compensation claim.

In 2015, respondent Liberty Mutual, the insurance provider, accepted a workers' compensation claim for Godifay's lumbar strain but declined to cover the disc bulge. The disc bulge was not covered because an orthopedist who examined Godifay and his medical records determined that the disc had some degree of desiccation which indicates "preexisting degeneration of the disc."

Godifay continued to experience back pain and was seen by a pain management specialist from 2015 to 2016. He received a selective nerve block at L5-S1 in 2015. This was paid for under his workers' compensation claim. After this, Godifay visited Dr. Vater. Dr. Vater diagnosed Godifay with a lumbar strain from an industrial injury and, separately, a nonindustrial degenerative disc disease at L5-S1. Godifay did not challenge this decision.

In 2017, Godifay and Liberty Mutual entered into a stipulation settling the overall claim. Liberty Mutual agreed to pay Godifay \$45,000, and both parties agreed that the claim would "remain limited to head injury, lumbar strain, and left shoulder strain only." The stipulation did not explicitly include or exclude the disc bulge. Liberty Mutual had already determined that the scope of the claim was limited to a lumbar strain and did not include the disc bulge and Godifay did not administratively appeal that decision. The stipulation further provided that the claim was closed and only currently accepted claims could be reopened.

In 2018, Godifay tried to reopen his workers' compensation claim so that a recommended surgical reconstruction at L5-S1 could be completed. Godifay relied on the opinion of Dr. Debiparshad, who was the

first and only doctor to state that the disc bulge was caused by the 2014 accident, to support his argument under NRS 616C.390(1)(a)-(c).²

Liberty Mutual declined to reopen the claim because the stipulation limited the workers' compensation claim to only a lumbar strain, and Godifay had failed to establish that the lumbar strain had worsened and now required surgery. Godifay appealed this decision. The hearing officer affirmed Liberty Mutual's decision. Next, Godifay appealed the decision to an appeals officer. The appeals officer affirmed the hearing officer's determination. Godifay requested judicial review of the appeals officer's order. The district court granted Godifay's petition in part and remanded the matter to the appeals officer with instructions to further consider NRS 616C.390 regarding the reopening of workers' compensation claims.

After reviewing new briefs submitted by the parties, the appeals officer once again concluded that Godifay had failed to prove that the primary cause of his bulging disc was the car accident, so Godifay was

²NRS 616C.390(1)(a)-(c) states:

If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

- (a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;
- (b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and
- (c) The application is accompanied by the certificate of a physician or a chiropractic physician showing a change in circumstances which would warrant an increase or rearrangement of compensation.

unable to satisfy the requirements for reopening a claim under NRS 616C.390(1)(b). Additionally, the appeals officer concluded that Godifay had failed to demonstrate detrimental reliance to support his argument that equitable estoppel prevented Liberty Mutual from denying coverage after an injection at L5-S1 had been approved in 2015. Therefore, the appeals officer determined that Godifay failed to meet his burden to reopen the industrial insurance claim and affirmed the hearing officer's decision and order denying the claim. Godifay sought judicial review of this decision, which was denied. This appeal followed.

On appeal, Godifay raises three issues. First, he argues that the appeals officer erred in determining that he did not meet his burden under NRS 616C.390(1) and incorrectly found that two doctors opined that the bulge was not caused by an industrial accident. Second, he argues that the stipulation did not exclude his disc bulge from his workers' compensation claim.³ Finally, Godifay argues that the appeals officer erred by not applying equitable estoppel to his case. We disagree.

³We note that the relevant portions of the stipulation Godifay entered limited his claim to only a lumbar strain and currently accepted claims. "A written stipulation is a species of contract." *DeChambeau v. Balkenbush*, 134 Nev. 625, 628, 431 P.3d 359, 361 (Ct. App. 2018) (citing *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647 (2011)). Stipulations "should therefore generally be read according to their plain words." *Id.* at 628, 431 P.3d at 361-62. Additionally, a contract is not ambiguous because the parties disagree on the interpretation of its terms. *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 367 (2013). Instead, a contract is ambiguous if it can reasonably be interpreted in more than one way. *Id.* While the parties argue this issue on appeal, we need not reach it because the appeals officer did not explicitly address it and because of our resolution of this case on other grounds. See *9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve); *Miller*

The appeals officer did not err in the application of NRS 616C.390(1)

Godifay argues that the appeals officer failed to properly apply NRS 616C.390(1) because he met the standard set forth in the statute to reopen the claim. He also argues that the appeals officer erred when she concluded that two doctors found that the bulge was not caused by the accident. VLS responds that the appeals officer correctly applied NRS 616C.390(1) and reached the correct conclusions from Godifay's medical records.

This court reviews an administrative agency's decision for clear error or an abuse of discretion. NRS 223B.135(3)(e)-(f); *see also Constr. Indus. Workers' Comp. Grp. v. Chalue*, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003). An "agency's fact-based conclusions of law 'are entitled to deference, and will not be disturbed if they are supported by substantial evidence.'" *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (quoting *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)). "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. This court reviews legal issues de novo. *Id.*

An insurer must reopen a claim if an increase or rearrangement of compensation is warranted by a change of circumstances, the original injury is the primary cause of the change of circumstances, and a physician or chiropractic physician certifies that the change of circumstances warrants an increase or rearrangement of compensation. NRS 616C.390(1)(a)-(c). It is undisputed that Godifay's disc bulge was worse and that a physician

v. Burk, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case at bar).

certified that it requires surgery. Therefore, the requirements of NRS 616C.390(1)(a) and (c) have been met. The parties dispute whether the requirement of NRS 616C.390(1)(b) (the original injury is the primary cause of the change of circumstances) has been met.

Careful review of the appeals officer's decision reveals that the appeals officer considered the opinions of all three doctors that addressed Godifay's disc bulge. The appeals officer concluded that Dr. Debiparshad's opinion was less persuasive than Dr. Perry's opinion or Dr. Vater's opinion. Substantial evidence exists to support the appeals officer's fact-based conclusion of law because the doctor that took the opportunity to review Godifay's previous MRI scans and medical history noted the preexisting degeneration of the disc, and disc bulge, separated the lumbar strain from the disc bulge and deemed the latter non-industrial. Additionally, another doctor also distinguished the lumbar strain from the disc bulge and seemingly determined that the disc bulge likely had a non-industrial cause. The appeals officer could reasonably find this evidence adequate to conclude that Godifay had not proven the accident was the primary cause of the need for the disc surgery and therefore her decision is supported by substantial evidence.

An appellate court "will not substitute its judgment as to the weight of the evidence for that of the administrative agency." *Langman v. Nev. Adm'rs, Inc.*, 114 Nev. 203, 210, 955 P.2d 188, 192 (1998) (citing *State, Dep't of Motor Vehicles v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991)). Instead, this court's "central inquiry is whether there is substantial evidence in the record to support the agency's decision." *Id.* (citing *State Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 87-88, 787 P.2d 408, 409 (1990)). The weight the appeals officer gave to Dr. Perry's opinion and Dr. Vater's

opinion, when it determined that Dr. Debiparshad's opinion was not more persuasive, cannot be reweighed by this court. Our review of the record reveals enough evidence to support the appeals officer's conclusion that Godifay had not proven the accident was the primary cause of the need for the disc surgery; therefore, her decision is supported by substantial evidence. Accordingly, we conclude that the appeals officer did not err when she determined that Godifay did not prove he met all the requirements of NRS 616C.390.

The appeals officer did not err when she found that equitable estoppel does not prevent VLS from declining to cover Godifay's back surgery

Godifay argues that VLS paid for treatment for the disc bulge, including pain management,⁴ and thus, equitable estoppel prevents VLS from refusing to cover Godifay's back surgery. VLS responds that the stipulation limited the claim and that the disc bulge was preexisting and non-industrial. Therefore, VLS argues that Godifay could not have detrimentally relied on continued coverage for the disc bulge.

"Equitable estoppel may be invoked against a party who claims a statutory right in administrative workers' compensation proceedings, when the invoking party has reasonably relied on the other party's words or

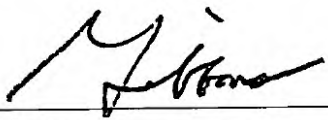
⁴We note that the appeals officer did not discuss Godifay's pain management treatment in her order for unknown reasons. It appears that this was not argued below. Issues not argued below are deemed waived. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"); see also *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating that the appellant is responsible for making an adequate appellate record, and when an "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").


conduct to her detriment.” *Dickinson v. Am. Med. Response*, 124 Nev. 460, 467, 186 P.3d 878, 883 (2008). The applicability of the doctrine of equitable estoppel is a question of fact. *Id.* at 468, 186 P.3d at 883. An “agency’s fact-based conclusions of law ‘are entitled to deference, and will not be disturbed if they are supported by substantial evidence.’” *Law Offices of Barry Levinson, P.C.*, 124 Nev. at 362, 184 P.3d at 383-84 (quoting *Jones*, 102 Nev. at 217, 719 P.2d at 806). “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.

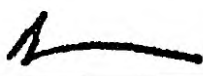
The appeals officer found that Godifay did not establish “any sort of detrimental reliance.” There is substantial evidence to support this finding. While Godifay did receive an injection in 2015, before the stipulation, the disc bulge at L5-S1 was not expressly included in the stipulation and the record does not show that Godifay received another injection after the stipulation or otherwise detrimentally relied upon respondents’ conduct.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁵Insofar as the parties have raised other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Gloria Sturman, District Judge
Ara H. Shirinian, Settlement Judge
Moss Berg Injury Lawyers
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk