IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON PILLMORE,
Appellant,
vs.
NEVADA GOLD MINES, LLC; AND CANNON COCHRAN MANAGEMENT SERVICES, INC.,
Respondents.

No. 85415-COA

ORDER OF AFFIRMANCE

Jason Pillmore 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.

Pillmore, an employee of respondent Nevada Gold Mines, LLC (NGM), was injured on his way to a job site in rural northern Nevada after his truck ran off a public access dirt road and crashed.[1] Pillmore had no memory of the crash. Shortly after the accident, a coworker found Pillmore and called 9-1-1 to coordinate a place to meet an ambulance. The coworker drove Pillmore approximately a quarter mile on the dirt road to meet a waiting ambulance. Medical reports compiled after the accident indicated that Pillmore likely suffered an alcohol withdrawal seizure which caused him to lose control of the truck.

Pillmore filed a workers' compensation claim for his injuries with respondent Cannon Cochran Management Services, Inc. (CCMSI), NGM's third party administrator. CCMSI denied Pillmore's claim on the ground that Pillmore's injury was caused by a nonindustrial condition and that Pillmore "failed to establish by a preponderance of medical evidence that

[1]We recount the facts only as necessary for our disposition.

an injury arose out of and in the course of" his employment. Pillmore appealed to a hearing officer who affirmed the claim denial, and thereafter he appealed again to an appeals officer.

At the hearing before the appeals officer, Pillmore testified that he was cutting back on his alcohol consumption at the time of the accident but had not experienced any alcohol withdrawal seizures before or after the accident. Pillmore further testified that although he did not remember the crash, on the day of the accident there were no bad weather conditions or traffic conditions. Sandy Bell, NGM's human resource specialist for workers' compensation matters, testified on behalf of NGM. Bell stated that NGM's emergency response policy required its employees to call 9-1-1 after an accident when someone needs medical attention. She testified that in this instance, Pillmore's coworker call 9-1-1 in accordance with NGM's policy.

During closing arguments, Pillmore argued that his injuries were compensable because they resulted from a mixed risk under *Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. 597, 426 P.3d 586 (2018) (holding that when an employee's personal risk of having a medical episode at work combined with the employment risk that the employer might fail to render aid, the resulting injuries were compensable under Nevada's workers' compensation scheme).

By contrast, NGM and CCMSI asked the appeals officer to apply *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 939 P.2d 1043 (1997), and find that Pillmore's injuries were noncompensable because they arose *solely* from his personal risk of a seizure. In *Gorsky*, the supreme court deemed a poker dealer's injuries from a workplace slip and fall noncompensable because his fall was caused solely by a personal risk: his preexisting condition of multiple sclerosis. *Id.* at 604-05, 939 P.2d at 1046. NGM and

CCMSI further argued that *Baiguen* did not apply because Pillmore could not establish that his employer failed to render aid in a manner that exacerbated his injuries.

Based on evidence presented at the hearing, the appeals officer determined that Pillmore's accident arose from a personal risk, as in *Gorsky*, rather than a mixed risk under *Baiguen*. Analogizing to *Gorsky*, the appeals officer deemed Pillmore's claim noncompensable because he found that Pillmore's accident did not involve any employment risks and was caused solely by a personal risk—his alcohol withdrawal seizure. The appeals officer found that Pillmore's case was distinguishable from *Baiguen* because Pillmore's coworker did not delay in calling for emergency services. Pillmore filed a petition for judicial review, which was denied. This appeal followed.

On appeal, Pillmore argues that the appeals officer abused his discretion because he failed to apply a mixed risk analysis to Pillmore's claim. Relying on dicta from *Baiguen*, in combination with legal authority from other jurisdictions, Pillmore argues that the "employment risk" of having to frequently use hazardous backcountry roads for his job, when combined with his personal risk of having a seizure while driving on those roads, required the appeals officer to apply the mixed risk test. Pillmore further maintains that the appeals officer interpreted *Baiguen* too narrowly by finding that Pillmore was not exposed to an employment-related risk simply because NGM immediately contacted emergency services.

NGM and CCMSI respond that the appeals officer's decision was supported by the law and substantial evidence. They argue that Pillmore's claim was not compensable because his accident and injuries were caused solely by a nonindustrial personal condition, just like the accident deemed noncompensable in *Gorsky*. Further, because Pillmore did not establish that

NGM caused any delay in rendering assistance which exacerbated his injuries, Pillmore cannot establish that the case involved a compensable mixed risk under *Baiguen*. Finally, NGM and CCMSI point out that the extrajurisdictional legal authority relied on by Pillmore is inapplicable in Nevada.

We conclude that the appeals officer's decision was supported by law and substantial evidence in the record, and therefore affirm. *See Gorsky*, 113 Nev. at 603, 939 P.2d at 1045 (recognizing that an appellate court's primary function in reviewing administrative decisions is to determine whether they are "arbitrary or capricious" and supported by "substantial evidence").

This court reviews an administrative agency's decision for clear error or an abuse of discretion. NRS 223B.135(3)(e)-(f); *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) (internal quotations omitted). "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. Questions of law, including "the administrative construction of statutes[,]" are reviewed de novo without deference to the agency's determinations. *Holiday Ret. Corp. v. State, Div. of Indus. Relations*, 128 Nev. 150, 153, 274 P.3d 759, 761 (2012).

An injured employee must prove "that the employee's injury *arose out of* and *in the course of* his or her employment" to be entitled to workers' compensation. NRS 616C.150(1) (emphases added). Both elements must be established by a preponderance of the evidence. *Id.* "Course of"

employment refers to the time and place that an injury occurred. *Wood v. Safeway, Inc.*, 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005). To satisfy the "arose out of" element, a claimant must show a causal link "between the workplace conditions and how those conditions caused the injury" based on the totality of the circumstances. *Gorsky*, 113 Nev. at 604, 939 P.2d at 1046. If the employee cannot fairly trace the accident "to the nature of employment or the workplace environment, then the injury cannot be said to arise out of the claimant's employment." *Id.* An injured employee "must establish more than merely being at work and suffering an injury in order to recover." *Id.* at 605, 939 P.2d at 1046.

In this case, the appeals officer made a factual finding that Pillmore's motor vehicle accident was *solely* caused by Pillmore's alcohol withdrawal seizure, and not by any condition of the public access road on which Pillmore was traveling. This factual finding was supported by substantial evidence, including medical records which established that Pillmore's single-vehicle accident was caused by an alcohol withdrawal seizure, Pillmore's admission that there were no weather or traffic conditions at the time of the accident, and Pillmore's testimony that he did not remember the crash. From these factual findings, the appeals officer determined that Pillmore's accident was similar to the accident deemed noncompensable in *Gorsky*, where a poker dealer who slipped and fell at work because of his multiple sclerosis failed to present any evidence that his slip and fall arose out of his duties as a poker dealer or that his work environment caused him to fall. *See id.* at 604-05, 939 P.2d at 1046. Like in *Gorsky*, Pillmore failed to present any evidence that a risk of the workplace *caused* his motor vehicle accident. Therefore, the appeals officer did not err in finding that Pillmore's accident resulted solely from a personal risk.

The appeals officer's determination that Pillmore's accident resulted solely from a personal risk is further supported by application of the actual street-risk test set forth in *Bob Allyn Masonry v. Murphy*, 124 Nev. 279, 183 P.3d 126 (2008). Under the actual street-risk test, injuries from an automobile accident "arose out of" employment and are compensable only if "(1) the employee's duties . . . require . . . [a] presence upon the public streets, *and* (2) the injury arose from an actual risk of that presence upon the streets." *Id.* at 285, 183 P.3d at 130 (internal quotation marks omitted) (alteration and emphasis in original). While Pillmore established the first prong of this test, he failed to demonstrate that his injury arose from an "actual risk" of his frequent presence on backcountry roads. In *Murphy*, the supreme court distinguished between "actual risks" inherent to the use of streets and highways and other "nonindustrial" risks that would be noncompensable. *Id.* As an example of a noncompensable risk, the court pointed to evidence from Murphy's medical records that revealed the existence of a brain tumor and noted that his tumor may have caused the accident. *Id.* at 286 n.25, 183 P.3d at 131 n.25. The court remanded the case so that the appeals officer could determine, in the first instance, whether the accident was caused by a risk of the road, or a personal risk related to Murphy's tumor. *Id.* at 289, 183 P.3d at 133. Here, because the appeals officer already found that the sole cause of Pillmore's accident was an alcohol withdrawal seizure, and that finding is supported by substantial evidence, it cannot be said that Pillmore's injury arose from an "actual risk" inherent to his presence on backcountry roads.

The appeals officer also did not abuse his discretion in determining, under *Baiguen*, that Pillmore's injuries were not caused by a mixture of personal and employment risks. In *Baiguen*, the supreme court

held that Nevada's workers' compensation system provided an exclusive remedy for the injuries an employee suffered when his personal risk of a stroke in the workplace combined with the employment risk that his employer might fail to render proper aid, thereby exacerbating his injuries. 134 Nev. at 601, 426 P.3d at 591. Here, the appeals officer rejected Pillmore's claim that NGM's actions after the accident exacerbated his injuries, and he does not challenge that factual finding on appeal. Instead, Pillmore contends that the appeals officer erred by rejecting his alternative argument—that dicta in *Baiguen* required the appeals officer to find his injuries compensable because his seizure occurred while he was driving a work vehicle on backcountry roads, and the injuries he suffered were greater than they would have been had he not been driving at the time.

In *Baiguen,* the Nevada Supreme Court offered in dicta some examples of "well-recognized" mixed risks from other jurisdictions, including "the risk that the injury from a painter's stroke will be worsened by falling off a ladder, or an epileptic cook who suffers a seizure and burns himself on a stove." *Id.* at 602, 426 P.3d at 591.[2] Pillmore contends that his automobile accident falls into this same category and must be considered a "mixed risk" case, even if the sole cause of the accident was personal, because his injuries were worsened by his employer's requirement that he operate a work truck on backcountry roads. Although this dicta in *Baiguen* appears to support Pillmore's argument, the supreme court already held in *Murphy* that an employee would be unable to establish that injuries from an automobile

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[2]"A statement in a case is dictum when it is 'unnecessary to a determination of the questions involved.'" *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev. 533, 539, 267 P.3d 48, 52 (2011) (quoting *Argentina Consol. Mining Co. v. Jolley Urga*, 125 Nev. 527, 536, 216 P.3d 779, 785 (2009)).

accident "arose out of" employment if the accident were caused by the employee's medical condition. *Murphy*, 124 Nev. at 286 n.25, 183 P.3d at 131 n.25. Thus, *Murphy* appears to foreclose Pillmore's argument.[3] Therefore, because substantial evidence supports the appeals officer's finding that Pillmore's automobile accident was solely caused by an alcohol withdrawal seizure rather than any condition of the backcountry roads on which he was traveling, the appeals officer did not err in declining to apply a mixed risk analysis.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. James E. Wilson, District Judge
Claggett & Sykes Law Firm
McDonald Carano LLP/Reno
Carson City Clerk

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[3]This court cannot overrule Nevada Supreme Court precedent. *See Hubbard v. United States*, 514 U.S. 695, 720 (1995) (Rehnquist, C.J., dissenting) (noting that stare decisis "applies a *fortiori* to enjoining lower courts to follow the decision of a higher court"); *People v. Solórzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (August 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of the California Supreme Court." (alteration omitted)).

[4]Insofar 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.