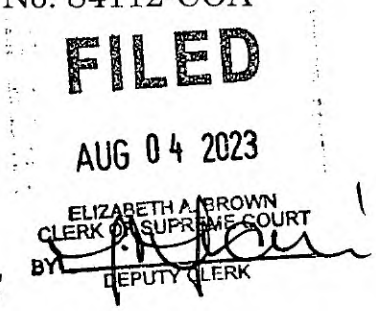
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARNOLD TRANSPORTATION, F/K/A LINKAMERICA CORP.; AND AIG,
Appellants,
vs.
TONY HARRIS,
Respondent.

No. 84112-COA



ORDER OF AFFIRMANCE

Arnold Transportation, formerly known as LinkAmerica Corp., and AIG (collectively AIG), appeal from an order granting a petition for judicial review in a workers' compensation matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Respondent, Tony Harris, injured his spine in an industrial accident in October 2011.[1] The injury was significant enough that Harris underwent spinal surgery. By 2013, he was found to be at maximum medical improvement and determined to have a permanent partial disability (PPD) of 18 percent whole person impairment. Harris decided to accept a lump-sum workers' compensation payment in lieu of periodic payments.

By 2019, Harris's condition had significantly worsened. Throughout the years, he had been in ongoing treatment that included steroid injections, pain medication, and therapy. To pay for additional suggested treatments, Harris petitioned the insurer in this case, AIG, to reopen his claim under NRS 616C.390(1), attaching his treatment records to the petition. AIG denied his petition.

Harris appealed the denial to a hearing officer. Harris's counsel also contacted one of the specialists who had been treating Harris, Dr. Lynch,

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

to ask for a medical opinion on the cause of Harris's worsening condition. While there were over 200 pages in potentially relevant medical records, Harris's counsel supplied Dr. Lynch with 75 pages. Within those 75 pages were all of the MRIs of Harris's spine from 2011-2019, Harris's surgical report, results of the functional capacity evaluation and disability evaluation, nerve conduction studies, accident treatment records, and records from other treating physicians. Moreover, as a treating physician himself, Dr. Lynch had access to additional records from his own investigation, tests, and treatment, as well as his colleagues' notes. Thus, the record available to Dr. Lynch was significantly more complete than the 75 pages provided by counsel. Following the review of Harris's treatment records, Dr. Lynch's medical opinion, to a reasonable degree of probability, was that Harris's present condition had worsened significantly since his 2013 PPD evaluation, and the reason for the deterioration was the ongoing effect of the 2011 industrial accident.

All evidence was admitted into the record, including Dr. Lynch's medical opinion. AIG does not appear to have offered any evidence.[2] After reviewing the evidence, the hearing officer found Harris satisfied his burden under the statute and reversed AIG's denial, thereby reopening Harris's industrial accident claim. AIG appealed to an appeals officer and argued that the medical record Harris provided to Dr. Lynch was incomplete, so therefore Dr. Lynch's opinion was not credible.

The appeals officer agreed with AIG and found Dr. Lynch's opinion not credible solely because Harris's attorney did not give the doctor all the records related to Harris's treatment. There were no findings on what

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[2]We note that the Decision and Order does contain a finding about Harris being released as a patient from a different treating physician.

was in the record that would impeach or undermine Dr. Lynch's conclusions, nor any explanation of why 75 pages of pertinent records were not sufficient. Nevertheless, absent Dr. Lynch's conclusion, the appeals officer still found a medical question remained as to the cause of Harris's deteriorating spinal health, so the appeals officer ordered an independent medical examination (IME) to determine if the deterioration was related to the industrial accident. However, Harris never underwent an IME because the parties could not agree as to who was responsible for the cost of travel for an IME ordered by an appeals officer and what "convenience" and "convenient" mean under the law, especially during a pandemic when Harris had moved to Hawaii. No agreement was reached as to the IME process, so none occurred before the deadline imposed by the appeals officer. Without a timely IME, the appeals officer considered the matter submitted on just the briefs and the record from the hearing officer. In March 2021, the appeals officer reversed the hearing officer's holding via a Decision and Order, thereby denying Harris's petition to reopen his claim.

Harris petitioned for judicial review. The district court granted the petition and reversed the appeals officer's Decision and Order, finding the appeals officer's determination that Dr. Lynch's physician certification lacked credibility to be arbitrary and capricious since there were no findings that Dr. Lynch had been impeached or that anything in Harris's medical records would support a different conclusion. AIG's appeal to this court followed.

On appeal, AIG argues that the district court improperly reweighed Dr. Lynch's credibility. Also, it argues if an IME is required, then AIG is not required under the law to either pay for an IME where Harris lives or pay for his travel for more than 40 miles.

"On appeal from orders deciding petitions for judicial review, this court reviews the administrative decision in the same manner as the district court." *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 248, 327 P.3d 487, 489 (2014). This court reviews an appeals officer's decision for "clear error or an arbitrary and capricious abuse of discretion." *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383 (2008) (footnote omitted). An agency's findings of fact are entitled to deference when supported by substantial evidence. *Id.* at 362, 184 P.3d at 383-84. Similarly, an agency's conclusions of law are given deference and "will not be disturbed if they are supported by substantial evidence." *State Indus. Ins. Sys. v. Montoya*, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993) (quoting *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986)). "Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion." *Id.* at 1032, 862 P.2d at 1199.

NRS 616C.390(1) provides that if an application for reopening a claim for additional treatment is made in writing after more than a year has passed since the date of claim closure, the insurer must reopen the claim if a physician certifies that a change in the injured party's circumstances warrant additional treatment and the primary cause is the injury underlying the original claim. The application need only be "accompanied by a certificate of a physician or chiropractic physician showing a change of circumstances which would warrant an increase or rearrangement of compensation." NRS 616C.390(1)(c). There is no requirement under the statute for the physician to provide what he or she reviewed to reach a medical opinion or to certify every medical record of a former employee's treatment was reviewed before coming to an opinion. *Id.*

Harris satisfied his burden of proof via his treating physician, Dr. Lynch, who medically certified that Harris's worsening condition warranted additional treatment, and the primary cause of the deterioration was the 2011 industrial accident. While the appeals officer found Dr. Lynch's opinion to be not credible, there is no evidence that the appeals officer considered all or any of the evidence before reaching a decision. *See Law Offices of Barry Levinson, P.C.*, 124 Nev. at 362, 184 P.3d at 383-84 (stating that this court may not revisit "an appeals officer's credibility determinations when the record demonstrates that the appeals officer made a reasoned decision after considering all of the evidence" (footnote omitted)). Further, at no point in the record was Dr. Lynch impeached. Likewise, there were no allegations of bias, incompetence, or that his opinion was somehow incomplete. Equally, there are no claims of error or bad faith by counsel for not providing additional records. Finally, AIG presented no conflicting evidence or anything else to undermine Dr. Lynch's certification.

The appeals officer made her determination solely on the fact that more medical records were in existence than the 75 pages Harris's attorney provided Dr. Lynch. There was no argument or finding that these 75 pages were cherry-picked, misleading, or duplicative. Nor that any additional review of the records, which were admitted during the administrative proceedings, would arguably have persuaded Dr. Lynch to form a different opinion. Thus, we conclude that the appeals officer's credibility determination was arbitrary and capricious.

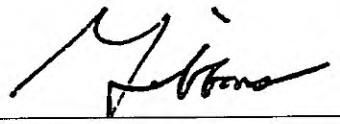
Because the appeals officer made an arbitrary and capricious ruling and ignored the substantial evidence outlining what Dr. Lynch reviewed, the IME should never have been ordered. An IME is only necessary when a medical question of causation remains. But, following Dr.

Lynch's physician certification, no relevant medical question remained in this case. As the IME was unnecessary to order, it so follows that it is unnecessary for this court to reach the statutory interpretation issues raised in this case about the IME process.[3]

The district court and the hearing officer were correct—Harris met his burden under the statute to reopen his claim to receive additional treatment.[4]

Accordingly, we

AFFIRM the order of the district court granting the petition for judicial review.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. James Todd Russell, District Judge
Laurie A. Yott, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Nevada Attorney for Injured Workers/Carson City
Nevada Attorney for Injured Workers/Las Vegas
Carson City Clerk

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[3]*See Johnson v. Dir., Nev. Dep't of Prisons*, 105 Nev. 314, 315 n.1, 774 P.2d 1047, 1048 n.1 (1989) (declining to resolve an issue in light of the court's disposition).

[4]Insofar as the parties have raised any 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.