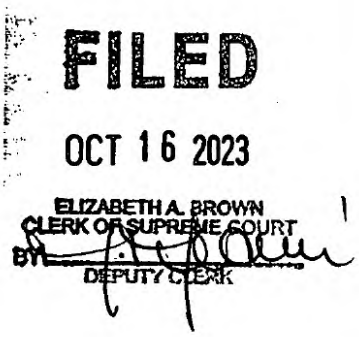
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN CLICKNER,
Appellant,
vs.
TOWN OF PAHRUMP; PUBLIC AGENCY COMPENSATION TRUST; AND ALTERNATIVE SERVICE CONCEPTS, LLC,
Respondents.

No. 85551-COA



ORDER OF REVERSAL

Kevin Clickner appeals from a district court order granting a petition for judicial review and reversing an appeals officer's decision and order in a workers' compensation matter. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Clickner began employment as a firefighter for Pahrump Valley Fire Rescue Services in August 2007.[1] In February 2017, while at his home, Clickner experienced a thoracic aortic aneurysm and dissection (TAAD) that required emergency surgery. Dr. Quynh Feikes, Clickner's operating surgeon, reported that he had a congenital bicuspid aortic valve (BAV) in addition to his TAAD.

Clickner filed a workers' compensation claim for his BAV and TAAD. The Town of Pahrump, Clickner's employer, provided insurance through the Public Agency Compensation Trust, which referred workers' compensation claims to a third-party administrator, Alternative Service Concepts, LLC (ASC) (collectively, respondents). ASC extended coverage

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

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for Clickner's BAV but excluded his TAAD.[2] ASC stated in its claim determination letter that Clickner's TAAD was neither statutorily presumed to arise from employment, nor was it independently employment related, based on the opinion of respondents' retained expert Dr. Theodore Berndt.

Clickner challenged the TAAD denial, appealing the claim determination to a hearing officer. The hearing officer found that Clickner's current treating cardiologist, Dr. John Bedotto, established a direct BAV-to-TAAD causal connection and ordered that Clickner's covered BAV claim be expanded to include his TAAD. Respondents administratively appealed the hearing officer's decision to an appeals officer.

The parties presented the appeals officer with the medical opinions of Drs. Feikes, Berndt, and Bedotto. Dr. Feikes first reported in a letter that Clickner's BAV "more than likely" caused his TAAD. However, she partially retracted her statement in a deposition, where she stated that the two conditions were *associated* but declined to say with medical certainty that Clickner's BAV "caused" his TAAD. Dr. Berndt also opined that BAV is associated with, but does not cause, TAAD. In his report, Dr. Berndt wrote that it was more accurate to consider TAAD as part of the

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[2]At the time of his diagnosis, Clickner had been employed as a firefighter for nearly ten years. Respondents concede that Clickner's BAV is conclusively an occupational disease of the heart under NRS 617.457. *See also Manwill v. Clark County*, 123 Nev. 238, 242-23, 162 P.3d 876, 879-80 (2007) (holding that a firefighter's congenital heart disease fell under NRS 617.457 where he satisfied the statutory length-of-employment requirement before disablement); NRS 617.457(1) (conclusive presumption applies to "diseases of the heart of a person who, for 2 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter").

syndrome of BAV rather than considering BAV a *cause* of TAAD. However, Dr. Berndt noted that Clickner's medical records did not contain any TAAD-associated risk factors other than his BAV. Lastly, Dr. Bedotto provided a short letter that stated Clickner's BAV caused his TAAD "to a very high degree of medical probability." In his later deposition, Dr. Bedotto reaffirmed the causal connection and indicated that the conditions have both an associative *and* causal relationship.

The appeals officer affirmed the hearing officer's decision and concluded that a preponderance of the evidence showed that Clickner's BAV likely "caused" his TAAD. The appeals officer determined that the causation statements and testimony of Drs. Feikes and Bedotto, both of whom had treated Clickner, held more weight than the "speculative" opinion of Dr. Berndt. The appeals officer also noted that all three doctors agreed that Clickner's medical records showed his BAV was the only apparent cause for his TAAD. Therefore, the appeals officer ordered that Clickner's covered BAV claim included his TAAD.

Respondents filed a petition for judicial review with the district court and argued that the appeals officer's decision was an abuse of discretion. Primarily, respondents asserted that the appeals officer's BAV-to-TAAD causation conclusion was clearly erroneous in view of the entire record, which they contend only showed an *association* between BAV and TAAD. Clickner countered that the appeals officer weighed all of the evidence to reasonably find that his BAV "caused" his TAAD and that respondents simply disagreed with the appeals officer's weight and credibility determinations. The district court granted respondents' petition and reversed the appeals officer's decision, concluding that the totality of

medical evidence supported an association, rather than a causal relationship, between Clickner's BAV and TAAD. This appeal followed.

On appeal, Clickner argues that the district court erred by granting the petition for judicial review because substantial evidence supported the appeals officer's conclusion that Clickner's BAV caused his TAAD.

This court reviews an administrative agency's decision for clear error or an abuse of discretion. *United Exposition Serv. Co. v. SIIS*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993); NRS 233B.135(3)(e-f). This court will not reweigh evidence or revisit an appeals officer's credibility determinations, nor will this court overturn an agency's decision if its determinations 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). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion[.]" *Id.*

Typically, an injured employee must establish by a preponderance of the evidence that their occupational disease arose out of and in the course of their employment to be entitled to receive workers' compensation benefits. NRS 617.358. The disease must be incidental to the nature of employment and appear to originate from an employment-related risk. NRS 617.440(2)-(3). When opining on causation in a workers' compensation claim, "[a] testifying physician must state to a degree of reasonable medical probability that the condition in question was caused by the industrial injury, or sufficient facts must be shown so that the trier of fact can make the reasonable conclusion that the condition was caused by the industrial injury." *United Exposition Serv. Co.*, 109 Nev. at 424-25, 851 P.2d at 425.

Here, the appeals officer found by a preponderance of the evidence that Clickner's BAV—a compensable disease of the heart—caused his TAAD. This conclusion was supported by the causation opinions of Dr. Bedotto and Dr. Feikes. The appeals officer relied on Dr. Bedotto's assertions, both in his written letter and subsequent deposition, that Clickner's BAV caused his TAAD to a high degree of medical probability.[3] The appeals officer also relied on Dr. Feikes's letter that stated that Clickner's BAV caused his TAAD. To the extent that Dr. Feikes's statements were conflicting due to her partially retracting her statement in her deposition, the appeals officer could weigh her testimony accordingly. *McClanahan v. Rayley's, Inc.*, 117 Nev. 921, 928, 34 P.3d 573, 578 (2001) (reasoning that it was "permissible and desirable" when the appeals officer weighed conflicting medical opinions); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 562, 188 P.3d 1084, 1091 (2008) (confirming that an appeals officer's decision may rely on conflicting evidence). Lastly, the appeals officer found that Dr. Berndt's opinion expressly disclaiming causation was unpersuasive and speculative. Nonetheless, the appeals officer noted that Dr. Berndt's testimony was consistent with the opinions of Drs. Feikes and Bedotto, all of whom agreed that BAV was the only apparent TAAD-associated risk factor present in Clickner's medical records.

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[3]Respondents challenge on appeal the admission of Dr. Bedotto's causation letter and Clickner's genetic test that excluded certain genetic TAAD risk factors. Respondents contend the appeals officer abused his discretion in admitting these documents because they do not satisfy the evidentiary requirements of *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008). However, the rules of evidence do not strictly apply to administrative proceedings and the appeals officer did not abuse his discretion by admitting them. *See* NRS 233B.123(1).

Although respondents challenge the weight that the appeals officer assigned to each doctor's opinion, this court will not revisit the appeals officer's weight and credibility determinations. *Milko*, 124 Nev. at 362, 184 P.3d at 383-84 (stating that evidentiary weight and credibility determinations are not open to appellate review). Dr. Bedotto's letter and testimony, Dr. Feikes's letter, and Dr. Berndt's testimony regarding Clickner's medical records provide sufficient evidence to support the appeals officer's conclusion.[4]

Therefore, we agree with Clickner that substantial evidence supported the appeals officer's decision, and thus the district court erred when it granted the petition for judicial review and reversed the appeals officer's decision.[5] Accordingly, we

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[4]The appeals officer also referenced Clickner's C-4 form as evidence of Dr. Feikes's causation opinion. While respondents challenge the appeals officer's reliance on the C-4 form to establish causation, because the appeals officer's conclusion was supported by other substantial evidence in the record, we need not reach this issue. *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).

[5]The appeals officer found, in the alternative, that under *Baiguen v. Harrah's Las Vegas, LLC*, 134 Nev. 597, 426 P.3d 586 (2018), the mixed-risk test applied to Clickner's case. *Baiguen* held that an injury may be compensable when an employment risk and a personal risk combine to produce the harm. *Id.* at 601, 426 P.3d at 591. Here, the appeals officer found that *Baiguen* applied because an employment risk contributed to a personal risk, and that personal risk caused the harm. This was error, as *Baiguen* requires the employment risk and personal injury to *each contribute* to produce the harm. *Id.* Nonetheless, because *Baiguen* was applied as an alternative to the appeals officer's primary causation finding, which was supported by substantial evidence, the error was harmless. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("An error is harmless when it does not affect a party's substantial rights.").

ORDER the judgment of the district court REVERSED.[6]

_____, C.J.
Gibbons

_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
GGRM Law Firm
Thorndal Armstrong/Reno
Eighth District Court Clerk

[6]The Honorable Bonnie Bulla, Judge, voluntarily recused herself from participation in this matter.