IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RED ROCK CASINO RESORT SPA/STATION CASINOS, INC.; AND SEDGWICK CMS,
Appellants,
vs.
SHAHEENA SULTAN,
Respondent.

No. 85560-COA

ORDER OF REVERSAL AND REMAND

Red Rock Casino Resort Spa/Station Casinos, Inc. (Red Rock), and Sedgwick CMS (collectively referred to as appellants where appropriate) appeal from a district court order denying their petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Respondent Shaheena Sultan was employed by Red Rock as a bartender.[1] In fall 2016, Red Rock required Sultan and other female bartenders to wear a three-pound, backless halter top made of mesh metal as part of their work uniforms. In early 2017, Sultan began experiencing back and neck pain that she attributed to wearing the mesh metal top while bending over to make drinks and clean the bar area throughout her shifts. Sultan's symptoms gradually worsened over time, advancing from a tingling to a burning sensation in her arms, along with progressively deepening pains in her back and neck.

In fall 2017, Sultan reported her increased pain to her supervisors and wrote a letter to HR about the issue; however, she did not receive a response. Sultan continued to complain about the pain, and

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

another supervisor recommended that Sultan seek a written accommodation from her physician exempting her from wearing the uniform. Sultan saw her primary care doctor in approximately February and March 2018. He diagnosed Sultan with pain in her back, neck, and thoracic areas, as well as ongoing neck spasms; prescribed her painkillers; and sent her back to full work duty on the first visit. In the second visit, the doctor provided Sultan with Family and Medical Leave Act paperwork due to her diagnoses. At this point, no one had provided Sultan with a C-1 notice of injury or occupational disease form (C-1 form) or a C-4 claim for compensation form (C-4 form).

Red Rock terminated Sultan's employment in spring 2018, but documents showed that she was rehired on May 18, 2018, and that Red Rock asked her to fill out paperwork regarding her back and neck pain on that date. Sultan filled out the paperwork that day regarding her medical issues and also completed a C-1 form and C-4 form. Sultan reported to Concentra on May 18 also, receiving a diagnosis of cervical and thoracic strains. The medical provider prescribed her physical therapy and topical gel for the pain, and released her to full duty work. However, Sultan was advised to not wear the mesh metal top.

Red Rock's claim administrator denied Sultan's claim for workers' compensation as untimely and for failing to demonstrate she had a compensable claim. Sultan timely contested the denial, but a hearing officer affirmed the administrator's decision. In resolving Sultan's appeal of the hearing officer's decision, the appeals officer concluded, on reconsideration, that Sultan's cervical and thoracic strains presented a

compensable occupational disease under NRS Chapter 617.[2] Specifically, the appeals officer found that Sultan showed by a preponderance of the evidence that her cervical and thoracic strains arose out of and in the course of her employment. To that end, the appeals officer found that Sultan showed she was exposed to risk of injury at work that stemmed from having to wear the heavy mesh metal top and that she was not exposed to such risks outside of work. Further, the appeals officer found that Sultan showed that her strains occurred as a natural consequence of her cumulative exposure to the risk of injury associated with wearing the mesh metal top during her shifts as a bartender. In sum, the appeals officer found that a preponderance of the medical evidence and credible testimony supported the conclusion that Sultan's occupational disease was a result of her employment and incidental to the character of business in which she was employed.

The appeals officer also found that, while Sultan's notice and claim were untimely, her untimeliness was excused by her mistake or ignorance of fact or law under NRS 617.346(2)(b). Specifically, although the appeals officer found that the seven-day notice requirement and the 90-day claim requirement were triggered on October 27, 2017, Sultan's failure to notice or file her claim until May 18, 2018, was excused by her unfamiliarity with the workers' compensation process. In that regard, the appeals officer found that Sultan credibly testified that she was unaware of what C-1 or C-

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[2]A different appeals officer initially heard the matter and also found Sultan had proven a compensable occupational disease but that appeals officer became unavailable before a final order was entered. Thus, a different appeals officer held a hearing and entered a final decision, and then entered the decision challenged in the district court following a motion for reconsideration.

4 forms were; that neither Red Rock nor Dr. Bartolome ever provided her with a C-1 or C-4 form upon her complaints; and that she believed she was following the necessary process by reporting her issues to her supervisors and HR.

Finally, the appeals officer found that Sultan was employed by Red Rock when she filed her claim and therefore was not required to rebut the presumption that her occupational disease did not arise out of and in the course of or her employment under NRS 617.358(2). As such, the appeals officer reversed the decision of the hearing officer and remanded the matter for proceedings consistent with his decision and order. Appellants timely filed a petition for judicial review, which the district court denied. This appeal timely followed.

We review an administrative decision in the same capacity as the district court and, as such, give no deference to the district court's decision. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013). We review an appeals officer's "factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence." *Id.* (quoting *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011)). "Substantial evidence exists if a reasonable person could find the evidence adequate to support the agency's conclusion." *Id.* (quoting *Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 384 (2008)). Additionally, we "will not reweigh the evidence or revisit an appeals officer's credibility determination." *Id.* (quoting *City of Las Vegas v. Lawson*, 126 Nev. 567, 571, 245 P.3d 1175, 1178 (2010)). We review questions of law de novo. *Id.*

We first agree with Sultan that the appeals officer did not abuse his discretion in finding that Sultan's untimely notice and claim were excused by mistake of fact or law. Indeed, the appeals officer found Sultan credibly testified that she was unfamiliar with the workers' compensation process and was ignorant to the necessity of a C-1 and C-4 form to begin her claim process, and we will not disturb that credibility finding. *See Milko*, 124 Nev. at 362 n.4, 184 P.3d at 383 n.4 (affirming an appeals officer's finding that a claimant was mistaken as to fact or law based on their credible testimony that they did not associate their pain with their workplace injury until after the 90-day claim period had run).

We likewise agree with Sultan that substantial evidence supports the appeals officer's finding that Sultan was employed by Red Rock when she filed her claim because there were several documents in the record, signed by both Sultan and her supervisor, reinstating Sultan to her prior position on May 18, 2018—the day Sultan filed her claim. *See Elizondo*, 129 Nev. at 784, 312 P.3d at 482. Although appellants point to evidence suggesting that Sultan was not rehired on that date, our role is not to reweigh the evidence, but rather, to determine whether a reasonable person could have concluded, based on the evidence presented, that Sultan was an employee when she filed her workers' compensation claim. *See Milko*, 124 Nev. at 365, 184 P.3d at 385. Because a reasonable person could have so concluded based on the evidence presented, we cannot say that the appeals officer abused his discretion in this regard.

Nevertheless, we agree with appellants that the appeals officer failed to consider the required element of disability when finding that Sultan had a compensable occupational disease. Specifically, as appellants contend, the appeals officer failed make any findings about if Sultan

satisfied her burden of establishing that she had the requisite disability for a compensable "occupational disease" under NRS Chapter 617.

NRS Chapter 617 allows workers to receive compensation for occupational diseases that arise out of and in the course of employment. *See* NRS 617.440 (stating the requirements for an occupational disease to be "deemed to arise out of and in the course of employment"). In addition to demonstrating that the occupational disease arose out of and in the course of employment, an employee must also show that their occupational disease caused disablement for the disease to be compensable. *See City of Henderson v. Spangler*, 136 Nev. 210, 213-14, 464 P.3d 1039, 1043 (Ct. App. 2020) ("An employee is not entitled to compensation from the mere contraction of an occupational disease, but rather must show 'a disablement resulting from such a disease.'" (quoting *Emp'rs Ins. Co. of Nev. v. Daniels*, 122 Nev. 1009, 1014, 145 P.3d 1024, 1027 (2006))); *see also* NRS 617.430(1) ("Every employee who is *disabled or dies* because of an occupational disease . . . arising out of and in the course of employment . . . [is] entitled to the compensation provided by those chapters for temporary disability, permanent disability or death.") (emphasis added). In this context, "disablement" means "the event of becoming physically incapacitated by reason of an occupational disease arising out of and in the course of employment," NRS 617.060, and for a claim to be compensable, an employee must be physically incapacitated "for at least 5 cumulative days within a 20-day period from earning full wages," NRS 617.420(1).

In this case, the appeals officer abused his discretion in finding that Sultan had a compensable occupational disease without making the necessary findings that Sultan experienced disablement as a result of her occupational disease. *See Manwill v. Clark County*, 123 Nev. 238, 244, 162

P.3d 876, 880 (2007) (reversing and remanding an appeals officer's finding that an employee had a compensable occupational disease because "the appeals officer did not determine whether [the employee] was disabled from his [occupational] disease for purposes of obtaining compensation"). Specifically, the appeals officer made no findings that Sultan was physically incapacitated for 5 or more days within a 20-day period and did not otherwise address the requirements to support that Sultan was disabled as a result of her occupational disease. *See* NRS 617.420. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court with instructions to remand the matter to the appeals officer for further proceedings consistent with this order.[3]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
The State of Nevada Department of Administration, Hearings Division
Hamilton Law
Eighth District Court Clerk

[3]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 do not present a basis for relief or need not be reached given the disposition of this appeal.