


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STATE OF NEVADA HIGHWAY
PATROL; AND CANNON COCHRAN
MANAGEMENT SERVICES, INC.,
Appellants,
vs.
PATRICK WALKER,
Respondent.

No. 84035-COA

FILED
FEB 26 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

State of Nevada Highway Patrol and Cannon Cochran Management Services, Inc. (appellants), appeal from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

In the proceedings below, respondent Patrick Walker, a highway patrol officer employed by the State of Nevada Highway Patrol (Highway Patrol), sought workers' compensation benefits after he was diagnosed with coronary artery disease, a disease of the heart. Walker also underwent surgical procedures, including coronary bypass surgery. Cannon Cochran Management Services, Inc. (Cannon), the insurer for Highway Patrol, denied the claim, concluding that Walker had predisposing conditions that he failed to correct, precluding benefits pursuant to NRS 617.457(11). Walker later sought a hearing concerning that decision and the parties agreed to take this matter directly to an appeals officer.

The parties submitted evidence in support of their positions, including Walker's medical records. Walker's medical records included information demonstrating that he had been advised that he was overweight, had high cholesterol and triglyceride levels, needed to reduce

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his fasting blood sugar, and that he should perform activities to correct those conditions.

The appeals officer found that there was a medical question as to Walker's predisposing conditions and that an independent medical examination was necessary to assess those conditions. The appeals officer therefore directed a cardiologist to review Walker's medical records to assess whether Walker had predisposing conditions, whether he took action to correct those conditions, and whether the conditions were within his ability to correct. Dr. Spaccavento conducted this examination and concluded that Walker had a disease of the heart and had predisposing conditions that contributed to heart disease. Dr. Spaccavento also noted that Walker had a family history of heart disease. Dr. Spaccavento noted that Walker had been diagnosed with hypertension and high cholesterol. In addition, Dr. Spaccavento specifically found that Walker had taken necessary steps toward controlling his predisposing conditions, including taking medication to help control those conditions.

The appeals officer subsequently entered an order finding that Walker had a compensable heart claim based on his medical records and Dr. Spaccavento's conclusions. The appeals officer noted that Walker had several predisposing conditions and that he started gaining weight in 2001. However, the appeals officer found that Walker's overall predisposing conditions began to improve after 2008 and noted Walker reduced his weight after 2010. The appeals officer also noted that Walker improved his total cholesterol and LDL levels and his triglycerides, which had been reduced to normal levels by 2012. The appeals officer ultimately found that Walker's medical records demonstrated that he had made efforts to improve his conditions.

In light of Dr. Spaccavento's opinion that Walker took necessary steps to correct and control his predisposing conditions, the appeals officer

found that Walker was entitled to the conclusive presumption pursuant to NRS 617.457(1) that his heart disease arose out of and in the course of his employment. The appeals officer therefore granted Walker's claim for workers' compensation benefits.

Appellants filed a petition for judicial review of that decision. The district court concluded that additional findings concerning Walker's predisposing conditions were necessary and remanded the matter to the appeals officer to make additional findings as to whether Walker had been ordered in writing to correct his predisposing conditions and whether his weight gain constituted a predisposing condition.

The appeals officer subsequently entered an order finding Walker had been advised in writing of his predisposing conditions, which included being overweight. The appeals officer also found that Walker weighed 273 pounds in 2010 and had been instructed to lose 45 pounds. By 2012, Walker had reduced his weight to 255 pounds, which the appeals officer found was evidence of his efforts to correct that predisposing condition. The appeals officer reiterated that Walker's additional predisposing conditions began to show improvement after 2008. And, in light of the evidence concerning Walker's medical history, the appeals officer therefore found that Walker was entitled to the conclusive presumption pursuant to NRS 617.457(1) that his heart disease arose out of and in the course of his employment and granted Walker's claim for workers' compensation benefits.

Appellants again filed a petition for judicial review of that decision, which the district court denied following a hearing. This appeal followed.

On appeal, appellants challenge the denial of their petition for judicial review, arguing that the appeals officer's decision was not supported by substantial evidence. In particular, appellants note that

Walker gained weight between 2001 through 2010, and they argue that weight gain was not considered by the appeals officer when he evaluated whether Walker took steps to correct his predisposing conditions. Appellants also contend that it was Walker's burden to prove that any predisposing condition was not within his ability to correct.

The parties agree that Walker is an officer qualifying for the conclusive presumption pursuant to NRS 617.457(1). The parties disagree as to whether Walker failed to correct a predisposing condition after being ordered to do so and concerning the burden of proof as to whether any such correction was within Walker's ability, such that he is no longer entitled to the presumption pursuant to the exception set forth in NRS 617.457(11).

Like the district court, this court reviews an appeals officer's decision in workers' compensation matters for clear error or abuse of discretion. NRS 233B.135(3)(e), (f); *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 557, 188 P.3d 1084, 1087 (2008). Our review is confined to the record before the appeals officer, and on issues of fact and fact-based conclusions of law, we will not disturb the appeals officer's decision if it is supported by substantial evidence. *Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087-88; *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 283-84, 112 P.3d 1093, 1097 (2005). "Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." *Vredenburg*, 124 Nev. at 557 n.4, 188 P.3d at 1087 n.4 (internal quotation marks omitted).

To receive benefits for an occupational disease, an employee typically must establish by a preponderance of the evidence that the disease arose out of and in the course of his employment. *Emp'rs Ins. Co. of Nev. v. Daniels*, 122 Nev. 1009, 1015, 145 P.3d 1024, 1028 (2006). Pursuant to NRS 617.457(1), as relevant here, a police officer meeting particular requirements is entitled to a conclusive presumption that his heart disease arose out of and in the course of his employment. *Id.* at 1015-16, 145 P.3d

at 1028. The police officer is not entitled to this presumption, however, if he fails to correct a predisposing condition “which lead[s] to heart disease when so ordered in writing by the examining physician subsequent to a [required] physical examination . . . if the correction is within the ability of the [police officer].” NRS 617.457(11); *Daniels*, 122 Nev. at 1016, 145 P.3d at 1028 (citing former NRS 617.457 (2005)). “Because the plain and unambiguous language in NRS 617.457(11) precludes an employee who fails to correct a predisposing condition from relying on the conclusive presumption in NRS 617.457(1), it may operate as an affirmative defense to such a claim.” *Las Vegas Metro. Police Dep’t v. Holland*, 139 Nev., Adv. Op. 10, 527 P.3d 958, 963 (2023). “It is well-established that a party asserting an affirmative defense has the burden of proving each element of that defense.” *Id.*

Because appellants relied on the affirmative defense of NRS 617.457(11) to defend against Walker’s claim, they bore the burden to prove, by a preponderance of the evidence, that (1) Walker had a predisposing condition that leads to heart disease, (2) Walker was ordered in writing by the examining physician to correct the predisposing condition, (3) Walker failed to correct the predisposing condition, and (4) the correction was within Walker’s ability to correct. *See id.* “[I]t is not enough to show that [Walker] failed to correct the predisposing condition leading to heart disease; appellants also had the burden to show . . . that [Walker] had the ability to correct the condition.” *Id.* at 964.

Here, the evidence before the appeals officer demonstrated that Walker’s hypertension, high cholesterol levels, and elevated weight were predisposing conditions, that Walker was ordered in writing by an examining physician to correct those conditions, and that Walker did not entirely correct them. Therefore, we conclude that appellants met their

burden to establish the first, second, and third elements necessary to maintain their defense under NRS 617.457(11). *See id.* at 963.

However, appellants also had the burden of proof as to the fourth element, that Walker had the ability to correct the predisposing conditions, and the record below does not contain evidence as to whether correcting the predisposing conditions was within Walker's ability. *See id.* The record contains evidence that Walker took corrective actions as ordered by the examining physician, as his medical records demonstrated that he lowered his total cholesterol and LDL levels, lowered his triglyceride levels, and took steps to lower his weight. Dr. Spaccavento specifically found that Walker took corrective actions as instructed.

Moreover, the record does not contain evidence indicating that Walker was fully capable of correcting all of his predisposing conditions. To the contrary, and as noted by the appeals officer, there is evidence in the record that Walker had been doing as he had been instructed, and despite that, his predisposing factors did not fully improve, which may indicate that he was not capable of correcting his predisposing conditions. *See id.* at 964 (stating "failure to correct the predisposing condition, despite the employee's compliance with the corrective action, may indicate . . . that the employee did not have the ability to correct the condition").

Contrary to appellants' assertion, the appeals officer specifically considered Walker's weight gain between 2001 and 2010, but also considered Walker's weight loss after that time period and his overall improvement to his additional predisposing conditions after 2008 when it evaluated whether Walker was entitled to the conclusive presumption pursuant to NRS 617.457(1). Moreover, as explained previously, it is not enough for appellants to meet their burden of proof by simply showing that Walker failed to correct his elevated weight, as they bore the burden to also

demonstrate that Walker had the ability to correct that condition. *See id.* at 963-64.

As appellants had the burden of proving that Walker had the capability to correct his predisposing conditions, *see id.* at 963, because appellants identify no evidence in the record to support the conclusion that correcting the predisposing conditions was within Walker's ability, we conclude that appellants failed to demonstrate that the appeals officer's decision amounted to clear error or an abuse of discretion. *See* NRS 233B.135(3)(e), (f); *Vredenburg*, 124 Nev. at 557, 188 P.3d at 1087-88. Accordingly, we affirm the district court order denying appellants' petition for judicial review.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Bitu Yeager, District Judge
Janet Trost, Settlement Judge
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
The State of Nevada Department of Administration, Hearings
Division
GGRM Law Firm
Eighth District Court Clerk